

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

253
DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(22) - Pages 2922 to 3103a

HERBERT SIEGAL
Attorney for Defendant-Appellant
Carmine Tramunti
17 John Street
New York, New York 10038
RE 2-5330

NANCY ROSNER
Attorney for Defendant-Appellant
Louis Inglese
401 Broadway
New York, New York 10013
925-8844

14

PAGINATION AS IN ORIGINAL COPY

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
John Barnaba (Resumed)		1520		

EXHIBIT INDEX

<u>Court</u>	<u>Identification</u>	<u>In Evidence</u>
57	1510	
58	1510	
59	1510	
60 (deemed)	1511	

IVAN S. FISHER
Attorney for Defendant-Appellant
Donato Christiano
401 Broadway
New York, New York 10013
925-5937

ROBERT L. ELLIS
Attorney for Defendant-Appellant
Angelo Mamone
17 East 63rd Street
New York, New York 10021
838-2323

FRANK A. LOPEZ
Attorney for Defendant-Appellant
Joseph DiNapoli
31 Smith Street
Brooklyn, New York 11201
237-9500

THEODORE ROSENBERG
Attorney for Defendant-Appellant
Frank Pugliese
31 Smith Street
Brooklyn, New York 11201
858-0589

KENNETH E. WARNER
Attorney for Defendant-Appellant
Joseph Ceriale
875 Avenue of the Americas
New York, New York 10001
244-4444

ROBERT FISKE
Attorney for Defendant-Appellant
John Gamba
One Chase Manhattan Plaza
New York, New York 10005
422-3400

GEORGE DAVID ROSENBAUM
Attorney for Defendant-Appellant
Vincent D'Amico
51 Chambers Street
New York, New York 10007
BE 3-8120

MICHAEL C. DOWD
Attorney for Defendant-Appellant
Frank Russo
120-10 Queens Boulevard
Kew Gardens, New York 11415
793-2900

ROBERT LEIGHTON
Attorney for Defendant-Appellant
Warren C. Robinson
15 Park Row
New York, New York 10038
267-6016

GARY SUNDEN
Attorney for Defendant-Appellant
William Alonzo
401 Broadway
New York, New York 10013
925-4848

EDWARD PANZER
Attorney for Defendant-Appellant
Hattie Ware
299 Broadway
New York, New York 10007
349-6128

MARTIN JAY SIEGAL
Attorney for Defendant-Appellant
John Springer
250 West 57th Street
New York, New York 10019
586-1414

HARRY POLLAK
Attorney for Defendant-Appellant
Henry Salley
299 Broadway
New York, New York 10007
BE 3-0386

hp

1
2 UNITED STATES OF AMERICA
3 vs.
4 CARMINE TRAMUNTI, et al.

73 Cr. 1099

5 New York, February 20, 1974;
6 10.00 A.M.

7 Trial resumed.
8 - -

9 (In the robing room.)

10 MR. PANZER: Your Honor, I have been informed
11 by Mr. Phillips that the government is going to concede
12 that Hattie Ware has standing with respect to the prior
13 motion that we had, I think it was a week or ten days ago
14 with respect to the seizure at 150 West 225th Street.
15 On the basis of that I am now moving that your Honor
16 reopen that hearing and consider that additional evidence.

17 In addition, Mr. Phillips and myself would be
18 able to stipulate the following, so that your Honor wouldn't
19 have to take any additional testimony with respect to the
20 hearing:

21 (1) That the particular items that Mr. Phillip
22 is now going to offer into evidence, which I believe is
23 the lease and some cancelled checks and some other documents
24 were seized in the bedroom of that apartment on top of which
25 the agent described to me -- Mr. Phillips was there --
as a three-level sort of table, with the bottom one having

1 hp

2 a drawer, the next one being open and the top one being
3 open.

4 The agents found the evidence in question on
5 the top, on the very top, among many other papers. When
6 they examined the papers they saw that one of the envelopes
7 had the name Hattie Ware.

8 They did, however, say that they did open the
9 bottom drawer, they were looking for things.

10 MR. PHILLIPS: But they did not take anything
11 from the bottom drawer.

12 MR. PANZER: That is true.

13 MR. PHILLIPS: And the agent would say that the
14 documents or papers in question were in plain view on the
15 top shelf.

16 MR. PANZER: I don't know whether we agree on the
17 conclusion, whether they were in plain view.

18 MR. PHILLIPS: They were in plain view in the
19 agents' terms.

20 MR. PANZER: You could see papers on the top.

21 MR. PHILLIPS: I am just talking about the papers.

22 MR. PANZER: Again, I object under the Fourth
23 Amendment.

24 THE COURT: All right. Is there anything else
25 that you know about besides these papers?

1 hp

2 MR. PANZER: That are coming into evidence?

3 THE COURT: Yes.

4 MR. PANZER: That is all that the government
5 has advised me.

6 MR. PHILLIPS: We are offering essentially 30
7 years of items taken from the apartment. One, the photo-
8 graphs that have already been introduced and received;
9 two, these papers; and three, the narcotics.

10 MR. PANZER: Could you tell us what papers you
11 are offering?

12 MR. PHILLIPS: The papers that are right here,
13 the lease and the telephone bills. And the telephone bills.

14 MR. PANZER: And you are offering cancelled
15 checks.

16 MR. PHILLIPS: Yes.

17 MR. PANZER: No other correspondence or docu-
18 mentation?

19 MR. PHILLIPS: That is correct.

20 THE COURT: I assume you are moving to suppress

21 MR. PANZER: All the items. In addition, if
22 my motion is denied, just in anticipation, I will say that
23 with respect to these documents there has been no foundat
24 laid that it is Hattie Ware's handwriting on the bills or
25 that she paid the bills.

1
2 THE COURT: I understand.

3 MR. PHILLIPS: We intend to connect this up,
4 your Honor, with other evidence, her relationship to the
5 apartment.

6 THE COURT: I understand.

7 MR. PANZER: I also would like to point out the
8 seizure took place after she was arrested, after the con-
9 spiracy had ended with respect to her, at least.

10 THE COURT: When they were trying to arrest
11 Basil Hansen, though.

12 MR. FISHER: May I comment on that, your Honor?

13 THE COURT: Sure, go ahead. COURT: Sure, go ahead.

14 MR. FISHER: I would submit that this evidence
15 is inadmissible by virtue of its remoteness in time to the
16 conspiracy thus attempted to be proved, maybe not as charged
17 in the indictment, but so far, from what we can tell from
18 the evidence adduced, this is very remote in time, occurring
19 after the arrest not only of Mr. Panzer's client but my own
20 and I think just about everybody else as well.

21 I think that at least the defendants other than
22 Miss Ware are entitled to a cautionary instruction,
23 specifically, that it's not being offered against them.

24 THE COURT: I understand. Mr. Lopez, do you
25 want to comment?

1 hp

2 MR. LOPEZ: No.

3 MR. FISHER: I have one other item.

4 MR. LOPEZ: He has one other matter. That is why
5 I came in with him.

6 THE COURT: Let me finish one at a time. Is
7 this one finished?

8 MR. PHILLIPS: Yes, your Honor, I believe so.

9 THE COURT: All right. Let me ask the next
10 question. When do you intend to offer these things?

11 MR. PHILLIPS: We would commence our offer with
12 the testimony of Agent Nolan, and in connection with his
13 testimony, your Honor, we are submitting to your Honor a
14 memo today for your Honor's reconsideration of your ruling
15 of yesterday that the government could not offer prior out
16 of court identification of defendants Di Napoli and Salley
17 by the witness Pannirello.

18 I had intended to call Nolan as the next witness
19 but in view, first of all, of our application to have the
20 Court reconsider its ruling in connection with the out-
21 of-court identification, and in view of the offer of the
22 documents, I am going to hold off on calling Nolan until
23 tomorrow morning.

24 THE COURT: All right. You have something
25 else?

2 MR. FISHER: Can I have until tomorrow to respond
3 in writing to your Honor's charge? I got a virus or some-
4 thing or other shortly after lunch which incapacitated me
5 beyond the normal extent of my incapacitation.

6 THE COURT: Do you find that much objectionable
7 in it?

8 Yes, but that ruling applies to you alone.

9 MR. PANZER: I have nothing to submit because
10 I thought it was all right.

11 MR. PHILLIPS: I would like to just cite one
12 other case -- it's not a Second Circuit case -- in connection
13 with the application for the prior out-of-court identifica-
14 tion. That is Clemons vs. United States, a D.C. Circuit
15 case, 408 Fed. 2d. I don't recall the page number, your
16 Honor.

17 MR. FISHER: I think the Clemons case has been
18 modified by recent D.C. Circuit cases, Mr. Phillips, Williams
19 being one, I think.

20 MR. LOPEZ: I will look up these cases, your
21 Honor. I will try to get back to your Honor as soon as
22 I can.

23 THE COURT: All right.

24 MR. PHILLIPS: Clemons is at page 1230.

25 THE COURT: All right. Anything else?

1 hp

2 MR. PHILLIPS: That is all I have.

3 MR. LOPEZ: That's it, your Honor.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(In open court; jury not present.)

THE COURT: Gentlemen, you recall that on Monday I read to you part of the charge and I requested that today there be submitted to me any objections which you might have and I suggested that it be done this morning.

Does anyone have any objections to the charge?

Mr. Siegal?

MR. SIEGAL: Mine are being drawn up.

May I have until tomorrow morning?

THE COURT: Mr. Lopez?

MR. LOPEZ: Yes, your Honor. Yes, your Honor.

THE COURT: Do you have them? Do you have them?

MR. LOPEZ: No.

THE COURT: Did you like it?

MR. LOPEZ: Yes, I liked it, except for certain aspects which are taken up by Mr. Fisher.

THE COURT: All right.

Mr. Fisher?

MR. FISHER: Yes, your Honor?

THE COURT: Tomorrow morning.

MR. FISHER: Yes, your Honor.

THE COURT: Mr. Ellis?

MR. ELLIS: Tomorrow morning.

1 gta2 .

2 MR. ELLIS: Tomorrow morning.

3 THE COURT: Mr. Rosenberg?

4 MR. ROSENBERG: No.

5 THE COURT: Nothing? Okay.

6 Mr. Richman?

7 MR. RICHMAN: Yes, your Honor. I will
8 have a short comment. I will submit tomorrow morning,
9 with the court's permission.

10 THE COURT: All right.

11 Mr. Curley?

12 MR. CURLEY: Mr. Sunden was to give me
13 the transcript this morning. I haven't seen it.
14 I took some notes on what was said. I would ask
15 for tomorrow morning.

16 But I would ask if the government is going
17 to submit anything on the fact that count 1 refers
18 to an old law and a new law on conspiracy and any propos
19 charge concerning single and multiple conspiracies, both
20 were missing in their requests with the reference that
21 would submit at a later time. I think probably most
22 of us will be submitting a similar charge with accomplish
23 testimony. And other than that I was just waiting to
24 see what was proposed on the conspiracy count.

25 THE COURT: Mr. Leighton?

MR. LEIGHTON: Tomorrow, please.

THE COURT: Mr. Panzer?

MR. PANZER: I have no objection.

THE COURT: Mr. Siegel, do you have any objections to the charge as I read it, the first part of it?

MR. SIEGEL: I do, your Honor, and I will be getting an affidavit in within the next day or so.

THE COURT: Tomorrow morning is the cutoff. Today was the cutoff. I am just being nice to you fellows.

Mr. Pollak?

Mr. Pollak?

MR. POLLAK: I have no exception.

THE COURT: Mr. King?

MR. KING: Judge, I really haven't had an opportunity to go over your charge as you read it and I would think at the present time I have none, but I would like to reserve.

THE COURT: You have until tomorrow morning.

MR. KING: To give me an opportunity to read the minutes, if your Honor please.

THE COURT: Yes, until tomorrow morning.

Mr. Phillips?

MR. PHILLIPS: Your Honor, we anticipated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

2931

getting to your Honor by the end of today our comments regarding the charge. We would not object to having until tomorrow morning, but we can have some by the end of the day.

THE COURT: All right, let us have some by the end of the day, if you can.

You know, gentlemen, I have told you on various occasions that I am terribly opposed to instant justice. I read the charge to you to give you the opportunity to reflect on it. I asked for your comments today. When I say tomorrow morning, that is the cutoff on it. All right?

Are there any applications?

MR. POLLAK: Just a question, your Honor.

I note I have a copy here of the government's brief on a motion to reconsider on the identification issue. I don't know. Does the court want to hear oral argument on that?

THE COURT: You didn't like your oral argument that was given yesterday?

MR. POLLAK: I felt that it was fine.

THE COURT: At such time as we get to -- I understand from the government that there will be no offer on that until tomorrow. If there is going to

1 gta

2932

2 be any, I will hear you tomorrow morning.

3 Mr. Curley?

4 MR. CURLEY: Yes. I would like to
5 pursue what I mentioned a few moments ago, whether the
6 government is going to elect between the old law and the
7 new law with respect to the various defendants on the con-
8 spiracy count.

9 THE COURT: I am not going to ask for that
10 election now. When they come in with their requests
11 to charge I am sure we will all be enlightened on that.

12 MR. CURLEY: My next question is when can
13 we expect that from the government? I will ask that
14 through the court. through the court.

15 - - THE COURT: All right. I don't know.

16 MR. PHILLIPS: Your Honor, I think we have
17 already submitted requests to charge and indicated
18 that we are proceeding both under the old law and the
19 new law as it applies to when the defendant joined the
20 conspiracy, if the jury did find that a conspiracy
21 existed, whether it was before or after May 1, 1971.

22 THE COURT: All right. You have your
23 answer.

24 MR. CURLEY: The problem is there are differ-
25 ent penalties.

1
2 THE COURT: Yes, I am aware of the differ-
3 ent penalties. Let us put it this way, not so much
4 the different penalties but the lack of discretion on the
5 part of the court. I am more aware of it than possibly
6 anybody else in this courtroom.

7 Yes, Mr. Panzer?

8 MR. PANZER: Your Honor, because of that
9 problem is your Honor going to ask the jury to make
10 special findings with respect to each individual defendant
11 if there is a verdict of guilty?

12 THE COURT: I don't know yet.

13 MR. PANZER: That may be one of the prob-
14 lems. lems.

15 THE COURT: Yes, I am aware of it.

16 MR. PANZER: I would request that, although
17 I hadn't made mention of it yesterday because I didn't
18 know what the government's position was going to be.

19 THE COURT: Yes. It makes life a little
20 more difficult for everybody.

21 MR. PANZER: Your Honor, may I just ask this
22 additional question because I think this is a good day
23 to ask it.

24 Do you think we will be working this Saturday?
25 Because I want to sort of put some guidelines on what I

1 gta

2934

2 will be doing this week.

3 THE COURT: Yes, unfortunately, we will
4 be working. I am not happy about it either.

5 Yes, Mr. Richman?

6 MR. RICHMAN: Your Honor, it is my under-
7 standing that the government is coming to the conclusion
8 of their case within the next few days.

9 THE COURT: If they finish it on Friday we
10 don't work Saturday. But he looked for a guideline. I
11 don't know whether he is going to finish on Friday.
12 I certainly don't have a list of their witnesses or
13 proposed -- proposed --

14 MR. RICHMAN: I spoke to Mr. Phillips and
15 he informed me Thursday, Friday at the latest, the case
16 would be finished.

17 THE COURT: Mr. Richman, you are a person
18 who practices fairly frequently in this courthouse, also
19 across the street. You know that people who give esti-
20 mates give the best possible one they can think of and
21 it really doesn't work out that way.

22 MR. RICHMAN: Thank you, sir.

23 THE COURT: All right. Bring in the jury,
24 please.

25 (Jury present.)

1 gta

2935

2 THE COURT: We are ready to go.

3 Mr. Phillips, do you want to call our next
4 witness?

5 MR. ENGEL: The government calls Salvatore
6 Spataro.

7 S A L V A T O R E S P A T A R O, called as a
8 witness by the government, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ENGEL:

12 Q Mr. Spataro, try to speak into the microphone
13 in front of you, if you would.

14 Will you tell us, please, where do you live?

15 A 1826 Mulford.

16 Q Is that Mulford Avenue?

17 A Yes, sir.

18 Q And where is that?

19 A The Bronx.

20 Q And how long have you lived there, Mr. Spataro?

21 A Seven years.

22 Q Mr. Spataro, I show you Government's Exhibit
23 70 in evidence and ask you whether you can identify the
24 gentleman portrayed there?

25 A This is the guy that rent the garage.

Q And what is his name?

A Frank. Frank Pugliese. I don't know, Pugliese.

Q Thank you.

And how do you know Mr. Pugliese?

A Because I rent the garage.

Q And when was it that you rented the garage to him, Mr. Spataro?

A I think two years and a half ago.

Q And about how long, if you remember, how long did he rent the garage?

A Seven, eight months. Seven, eight months.

Q Mr. Spataro, I show you Government's Exhibit 77 in evidence and ask you to identify what is shown there?

A This is my garage.

THE COURT: I am sorry. I didn't hear the answer. Would you repeat it, Mr. Reporter.

(Record read.)

Q I show you Government's Exhibit 76 in evidence and ask you to identify that.

A This is the driveway of the garage.

MR. ENGEL: I have no further questions, your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gra

Spataro-direct

2937

THE COURT: All right.

BY MR. ENGEL:

Q Just one further thing, Mr. Spataro.

This garage, which I show to you in Government's Exhibit 77, is the garage you rented to Mr. Pugliese?

A Yes.

MR. ENGEL: I have no further questions.

CROSS EXAMINATION

BY MR. ROSENBERG:

Q Sir, my name is Theodore Rosenberg. I represent Frank Pugliese.

When he rented this garage from you he paid you by check, is that correct?

A No.

Q Cash?

A Yes.

Q And he rented it under the name of Frank Pugliese?

A Yes.

Q And you knew Frank Pugliese from before the time he rented the garage, did you not?

A No, no.

Q Did you ever work with him?

A No.

Q Did you ever find out just what it was he kept

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Spatar-cross

2938

in the garage?

A Wait a minute. Say it again, because I don't understand.

Q Do you know what he kept in the garage?

A Oh, he got what they use a bricklayer, bricks, some block, motor, to mix the stuff. That's it.

A Okay. Thank you.

THE COURT: Anybody else?

Does anybody else wish to inquire?

All right. Mr. Spataro, thank you very much.

You may leave now.

(Witness excused.)

(Witness returned.)

1 hpl

2939

T3

2 MR. PHILLIPS: The government calls Stanley
3 Blasof.

4 S T A N L E Y B L A S O F, called as a witness on
5 behalf of the government, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PHILLIPS:

9 Q Mr. Blasof, by whom are you employed?

10 A I am a forensic chemist with the Drug Enforcement
11 Administration.

12 Q How long have you been so employed?

13 A I have been a chemist for the U.S. Department of
14 Justice and its predecessor agencies for over ten years.

15 Q Are you assigned here to the New York region?

16 A I am.

17 Q What are your duties as a forensic chemist?

18 A My duties include the analysis of narcotic and
19 dangerous drugs and testifying as an expert witness in
20 court.

21 Q What is the extent of your formal education?

22 A I have a Bachelor of Science Degree in Chemistry

23 MR. KING: If your Honor please, I notice the
24 jurors can't even hear the witness.

25 THE COURT: Mr. Blasof, do me a favor, please.

1 hp2 Blasof-direct

2 There is a microphone directly in front of you. Speak
3 directly into it.

4 Q How many times have you had occasion to examine
5 a substance to determine whether or not it was a narcotic
6 drug?

7 A Several thousand.

8 Q Could you tell us briefly what methods you used
9 to examine a substance to determine whether or not it is a
10 narcotic drug?

11 A I use color tests, micro crystalline tests,
12 infra red absorbence, ultra violet absorbence gas chroma-
13 tography, thin layer chromatography.

14 Q You mentioned you had testified in court as an
15 expert. Is that as a forensic chemist?

16 A Yes.

17 Q How many times have you so testified?

18 A Several hundred times.

19 Q I show you what has been marked Government's
20 Exhibit 63-A for identification. Can you identify that?

21 A Yes, I can. I have my initials on the envelope.

22 Q When did you receive that particular envelope?

23 A On January 11, 1973.

24 Q From whom did you receive it?

25 A From the supervisory chemist in the New York

1 hp3 Blasof-direct
2 regional lab.

3 Q What condition was it in when you received it?

4 A It was in a locksealed condition.

5 Q What did you do after you received it?

6 A I opened it and removed the contents.

7 Q I show you what has been marked Government's
8 Exhibit 63-B and 63-C for identification. Can you
9 identify those exhibits?

10 A Yes, I can.

11 Q What are they?

12 A 63-C is the contents of Government's Exhibit 63-
13 and 63-B is the envelope in which I placed Exhibit 63-C
14 after my examination.

15 Q Did you then seal Government's Exhibit 63-B
16 for identification?

17 A I did.

18 Q Having examined the contents of Government's
19 Exhibit 63-C for identification did you arrive at a con-
20 clusion as to what the contents were?

21 A I did.

22 Q Could you tell us what that conclusion was?

23 A I found the sample to contain heroin hydro-
24 chloride.

25 Q Do you recall how much in terms of weight?

1 hp4 Blasof-direct

2 A The sample weight was 21.18 grams.

3 Q Do you recall the percentage of heroin hydro-
4 chloride?

5 A The percentage was 12.7 per cent.

6 Q You say 215 grams. Would that be close to a
7 quarter of a kilogram?

8 A Yes.

9 Q I now show you what has been marked Government's
10 Exhibit 64-A for identification. Are you able to identify
11 that exhibit?

12 A Yes.

13 Q What is it? Q What is it?

14 A It's a lockseal envelope which has been opened.

15 Q When did you first receive that?

16 A On January 22, 1973.

17 Q What condition was it in when you received it?

18 A It was in a locksealed condition.

19 Q Did you open it?

20 A Yes, I did.

21 Q And remove the contents?

22 A Yes.

23 Q I show you now what has been marked Government's
24 Exhibit 64-C for identification as well as Government's
25 Exhibit 64-B for identification, from which the slip has

1 hp5 Blasof-direct

2 fallen off, the exhibit tag.

3 THE COURT: We will put another one on.

4 Q Can you tell us, Mr. Blasof, what those exhibits
5 are?

6 A 64-C for identification is plastic bags con-
7 taining a white powder which were contained in Govern-
8 ment's Exhibit 64-A for identification.

9 Q Did you examine the particular white powder?

10 A Yes, I did.

11 Q After you examined it did you place it in
12 Government's Exhibit 64-B for identification?

13 A I did. A I did.

14 Q Did you then seal Government's Exhibit 64-B
15 for identification?

16 A I did.

17 Q After examining the white powder did you arrive
18 at a conclusion as to what the white powder was?

19 A Yes.

20 Q Could you tell us what it was?

21 A I found --

22 Q What the conclusion was.

23 A I found the white powder to contain heroin
24 hydrochloride.

25 Q Do you recall what the weight was, the amount?

1 hp6 Blasof-direct

2 A The weight was 317.25 grams.

3 Q What was the percentage of heroin hydro-
4 chloride?

5 A 12 per cent.

6 Q Mr. Blasof, are you familiar with the term
7 nickel bag?

8 A I am.

9 Q What is it?

10 A It's the street size bag of heroin.

11 Q That is sold on the street?

12 A Yes.

13 Q How much does it cost on the street?

14 MR. POLLAK: Objection, your Honor. The
15 witness has not been qualified as an expert on this aspect.

16 THE COURT: Yes. I will sustain it.

17 Q Have you ever had occasion to examine a nickel
18 bag of heroin?

19 A Yes.

20 Q How many times?

21 A Thousands of times.

22 Q Can you tell us why it is referred to or called
23 a nickel bag?

24 MR. POLLAK: Same objection, your Honor.

25 THE COURT: Same ruling.

1 hp7

Blasof-direct

2 MR. PHILLIPS: Your Honor, may we approach the
3 side bar?

4 THE COURT: Sure.

5 (At the side bar.)

6 MR. PHILLIPS: Your Honor, if the only objection
7 as to his qualifications is with respect to a nickel bag,
8 I think his examination of thousands of nickel bags would
9 be sufficient to qualify him.

10 MR. POLLAK: My objection will be based upon the
11 fact that while he may have examined them and know how
12 much heroin is in a small bag, he certainly is not an
13 expert as to the cost or method of distribution, or anything
14 else. else. else.

15 I don't know what this is leading to, but I
16 don't think it's proper. He is not an expert on the street
17 vending operation.

18 MR. EPSTEIN: Your Honor, my objection would be
19 simply this: I assume where we are going is Mr. Phillips
20 plans on posing to this witness the question as to how
21 many street bags could be derived from the amount of
22 heroin which he has examined in the government's exhibit
23 that is presently before him.

24 That I object to on the grounds that I consider
25 it not only irrelevant and immaterial to the charge before

hp8

Blasof-direct

the jury in this case, but I also consider it extremely and highly prejudicial to the defendants here on trial. It's an attempt to put before this jury an inflammatory issue which in no way adds anything to the merits of the government's case nor would its deletion from evidence in any way subtract from the merits of the government's case. It's sole purpose would be to inflame this jury.

MR. PHILLIPS: The government is charging these defendants in this case with a large-scale conspiracy to distribute substantial quantities of narcotics. The jury when they first came into the courtroom didn't know anything about narcotics. They have heard the phrases "eighths," "quarters," "halves" and "kilo" to describe quantities of narcotics.

It seems to me that we have a substantial burden of proof to show the widespread nature of this conspiracy and that in order to do so we should be permitted to show to the jury what these terms really mean in terms of the street quantities of heroin that are distributed.

We have further had testimony through Primrose Cadman about what a nickel bag is. It seems to me that we should be permitted to connect up what the nickel bag being purchased by her in 1969 and a nickel bag even today is in comparison to a quarter-kilo of heroin.

1 hp9

Blasof-direct

2 THE COURT: Are you going to ask him about the
3 cost of a nickel bag?

4 MR. PHILLIPS: A nickel bag is a \$5 bag. That
5 is why they call it a nickel bag.

6 I am going to ask him what the average purity
7 of a nickel bag is and how many nickel bags would be found
8 in a quarter-kilogram of heroin of 12 per cent purity.

9 MR. POLLAK: I respectfully submit that perhaps
10 some of the other witnesses the government has called might
11 have qualified as experts on this type of operation, but
12 I don't think this witness does.

13 THE COURT: On the question of cost this fellow
14 cannot be an expert. He has not been out, I assume,
15 on the street buying nickel bags.

16 Now, he has examined nickel bag-, things which
17 have been represented to him as nickel bags. The amount
18 of heroin in these things which he examined I will permit
19 you to have him tell us about, and also the purity.

20 MR. EPSTEIN: You mean as to the amount of
21 heroin in a nickel bag and the purity in a nickel bag?

22 THE COURT: Yes. As to how he cuts up a quarter
23 kilo, into how many nickel bags, let them do their own
24 mathematics. I don't think we ought to go into that.

25 MR. PHILLIPS: The only thing I would ask your

1 hp10 Blasof-direct

2 Honor is to take judicial notice that a nickel bag is \$5,
3 not nickels.

4 THE COURT: We already had testimony from
5 Primrose Cadman about that.

6 MR. PHILLIPS: I don't recall whether she said
7 \$5 or --

8 THE COURT: She did.

9 MR. PHILLIPS: Did she?

10 THE COURT: Yes.

11 MR. FORTUIN: She mentioned a deuce bag.

12 THE COURT: It was both.

13 (In open court.) (In open court.)

14 BY MR. PHILLIPS: MR. PHILLIPS:

15 Q Mr. Blasof, you mentioned a little while ago that
16 you had examined thousands of nickel bags of heroin.

17 Could you tell us from your experience what is
18 generally the percentage of heroin found in a nickel bag
19 of heroin?

20 A Approximately 5 per cent in this area.

21 Q When you say "this area," you mean the New York
22 area?

23 A Yes.

24 Q Could you tell us what is the quantity generally
25 of a nickel bag of heroin?

1 hp11

Blasof-direct

2 A Approximately 100 milligrams.

3 MR. PHILLIPS: I have nothing further, your
4 Honor.

5 THE COURT: All right. Mr. Fisher.

6 MR. PHILLIPS: One thing, your Honor. We
7 offer Government's Exhibits 63-C and 64-C for identification

8 MR. ROSENBERG: Objection, if your Honor please

9 THE COURT: The objection I assume is on behalf
10 of all defendants. The objection is overruled. They will
11 be received in evidence.

12 (Government's Exhibits 63-C and 64-C received
13 in evidence.)

14 CROSS EXAMINATION

15 BY MR. FISHER:

16 Q Mr. Blasof, in the course of your ten years of
17 experience in the forensic chemistry field you have had
18 occasion, have you not, to examine substances suspected of
19 being cocaine, is that right?

20 A I have.

21 Q And almost as frequently as substances suspected
22 of being heroin, is that right?

23 A Not quite as frequently.

24 Q In any event, you would agree, would you not,
25 that by virtue of your experience with regard to cocaine

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hp Blasof-direct 2950
you would be able to give, if called upon, opinions similar
to the ones which you gave with regard to heroin, is that
right?

A Yes.

Q And therefore you know, do you not, that all
cocaine is not imported into this country?

A Yes.

Q In fact, there is such a thing as synthetic
cocaine?

MR. PHILLIPS: Your Honor, I object. I think
Mr. Fisher is making this witness his own witness and this
is outside the scope of direct examination.

THE COURT: He is, but I will permit it.

Q Have you ever heard of synthetic cocaine, sir,
have you ever come across it?

A No.

Q Would you know the difference between synthetic
cocaine, if any, and natural cocaine?

THE COURT: If he has not run across it how
can he answer whether he knows the difference between one
and the other?

Q In addition to your own efforts, your own direct
efforts and experiments in the laboratory, you do, do you
not, read in the field of forensic chemistry?

2 A I do.

3 Q On the basis of those readings as well as dis-
4 cussions with your associates you have come to learn certain
5 things with regard to forensic chemistry, is that right?

6 A I have.

7 Q And in part your opinions that you have given
8 us today and your own feeling with regard to your own
9 expertise is in part a result of these readings and these
10 conversations with associates, isn't that right?

11 A Yes.

12 Q Have you ever read that there is such a thing
13 as synthetic cocaine?

14 A I am not familiar with it.

15 Q So you can't say whether there is or there is no

16 A I am not familiar with it.

17 THE COURT: If he is not familiar with it, how
18 can he?

19 Q You know Dr. Pro?

20 A Would you state his first name and where he work

21 Q I forgot his first name. He works in the former
22 Bureau of Narcotics and Dangerous Drugs lab in Washington,
23 D.C.

24 A I don't know of anyone who answers that des-
25 cription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hp

Blasof-direct

2952

Q How about a Mr. Brunelle?

MR. PHILLIPS: Richard.

Q Richard Brunelle.

A I know him.

Q Do you know of his work, sir, in the fields of
neutron activation analysis and atomic absorption tests?

A Somewhat.

Q And you are familiar with the fact, are you not,
that these tests have been employed by the United States
Government, their forensic chemists, for the purposes of
introduction of evidence into criminal trials?

A I believe they have. I believe they have.

Q And you are familiar with some if not all of
the writing in that field, are you not?

A Some of it.

Q As a result of the writing in the field with
which you are familiar and of your knowledge of Mr. Brunelle
and perhaps others of your associates, you know, do you not,
that by virtue of the atomic absorption tests and neutron
activation analysis it is possible sometimes to determine
the common source of substances?

A Would you repeat that, please?

Q It's not my day.

As a result of your readings in the field, your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hp

Blasof-direct

2953

conversations with your associates, including but not
limited to Mr. Brunelle, you know, do you not, that
atomic absorption tests and neutron activation analysis
can be sometimes used to identify the common source of
substances?

A It can sometimes be used, yes.

Q For instance, referring to Exhibit 64C in evidence --

MR. FISHER: There are two 64C here.

THE COURT: Yes, there are four 64C's, I think.

Q By the use of neutron activation analysis and/or atomic absorption tests, it would be possible, would it not, to determine that the substance in each of those packets had a common source.

A Perhaps yes and perhaps not.

Q There is a possibility that those tests could be used to make that determination, is that right?

A Perhaps. Perhaps.

Q And when dealing with neutron activation analysis and atomic absorption tests, inquiry is made into what is known as trace elements, is that right?

A Yes.

Q And when we are talking about trace elements, we are talking about substances found in parts per million, is that right?

MR. PHILLIPS: Your Honor, I think it is about time to object to this line of questioning.

MR. FISHER: I have about three more questions.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: No. Go ahead.

Q Is that right?

A Yes.

Q So that when talking about neutron activation analysis and/or atomic absorption tests, it is not necessary to have a terribly big sample, is it?

A I don't believe so.

Q Thank you.

MR. FISHER: I have no further questions.

THE COURT: I do.

Mr. Blasof, for a neutron activation test or atomic absorption test, for these tests, what type of equipment is necessary to give the test?

THE WITNESS: You need equipment to radiate the sample and also to determine radiation that comes out of the sample.

THE COURT: And is this equipment available to you at the New York office of the drug enforcement administration?

THE WITNESS: No.

THE COURT: Okay.

MR. FISHER: Your Honor, may I inquire into that area?

THE COURT: Sure, go ahead.

BY MR. FISHER:

Q That equipment, particularly some form of apparatus so that the substance can be eradicated is, in fact, however, available to government chemists upon request, isn't that right?

A I imagine it is.

Q And more specifically, what we are talking about is a nuclear reactor, isn't that right?

A Yes.

Q And there is a nuclear reactor available to the government at Denver?

A I don't know. I don't know.

Q In any event, you know that there are such apparatuses available to forensic chemists working for our government at their request?

A I believe it is.

THE COURT: Okay.

MR. PHILLIPS: I just have two questions, I think, your Honor.

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q Mr. Blasof, this apparatus is located in Washington, is it not?

A Yes.

Q And that is where Mr. Brunnell works and does his experiments, isn't it?

A Yes.

Q And with respect to these two types of tests neutron activation analysis and atomic absorption, the purpose there is to determine whether a particular substance had a common source with another particular substance, isn't that correct?

A Yes.

Q A milligram is 1/1000th of a gram?

A Yes.

MR. PHILLIPS: I have no further questions, your Honor.

THE COURT: All right. Step down.

(Witness excused.)

THE COURT: Is this a good time for a break or do you want to call your next witness?

MR. PHILLIPS: My next witness is fairly long, your Honor.

THE COURT: All right, let us take a break. Everybody remain seated, please. Ladies and gentlemen, you may go out with the marshal.

(The jury left the courtroom.)

THE COURT: All right, gentlemen, we will take 10 minutes.

(Recess.)

(In open court; jury present.)

THE COURT: Call your next witness.

MR. ENGEL: The government calls James Provitera.

MR. POLLAK: Your Honor, before the witness testifies, I would like to have a side-bar conference.

THE COURT: Yes. Fine.

(At the side bar.)

MR. POLLAK: Your Honor, yesterday I made an application with regard to this witness that if the witness was going to attempt an identification of my client I wanted to have a lineup.

My second application was that if this witness has made a prior out-of-court identification, I would want the federal equivalent or Wade hearing on this witness.

Specifically, I was a little shocked to learn after Harry Pannirello attempted an in-court identification of my client and failed to do so that he had previously made a photograph identification. As

1 gta

2959

2 I am sure the court is well aware, if the photograph
3 identification had been unduly suggestive, the Government
4 might, under the existing law, have been barred from
5 attempting an in-court identification.

6 Now, if the witness identified my client, I
7 think I would have been sorely prejudiced because I never
8 would have learned of the out-of-court identification.
9 I think the government was sorely remiss and I question
10 the ethics of their not advising me before Pannirello
11 testified of the photograph identification.

12 THE COURT: Go ahead.

13 MR. PHILLIPS: I don't know. We oppose
14 any application for a lineup at this point. I again
15 represent to the court, and I will tell Mr. Pollak this,
16 that this witness picked out of 20 photographs the
17 photograph of Henry Salley.

18 MR. POLLAK: In that case I would ask for
19 the federal equivalent of a Wade hearing before the
20 witness is allowed to or attempts to make any identifica-
21 tion in court.

22 THE COURT: Do you have any other witnesses
23 lined up?

24 MR. PHILLIPS: No, we don't.

25 THE COURT: I assume Provitera will be

1 gta

2960

2 long.

3 MR. PHILLIPS: Yes.

4 THE COURT: On the question of the lineup, the
5 lineup application I think might apply in a case where
6 there is only one or two defendants, but here you have
7 a lineup in and of itself by all of these people packed
8 into the courtroom, so as far as that is concerned
9 that request is denied.

10 MR. POLLAK: I respectfully except.

11 MR. PHILLIPS: May I just make a statement
12 on the record. I don't want to stand silently by while
13 Mr. Pollak accuses the government of unethical conduct.
14 The fact of the matter is that Pannirello had identified
15 Salley out of 20 photographs and we anticipated that he
16 would identify him in the courtroom.

17 MR. POLLAK: The unethical conduct, Mr.
18 Phillips, for your edification, consisted in not advising
19 defense counsel beforehand that the witness had made an
20 out-of-court identification.

21 MR. PHILLIPS: There is no requirement that
22 we advise defense counsel.

23 THE COURT: There is no ethical requirement
24 for that at all.

25 Do you want to say something?

2 MR. ENGEL: No. I just want to proceed.

3 THE COURT: Your Honor, any application for
4 a Wade hearing is premature at this point where the wit-
5 ness did not even take the stand or attempted an in-court
6 identification. Should circumstances eventuate
7 where we want to make an issue of his out-of-court iden-
8 tification, why, then Mr. Pollak may renew his application
9 and we can discuss it at that time. But I don't see
10 any requirement for a Wade hearing of an in-court identifi-
11 cation when you have a few hundred people in the courtroom.

12 MR. POLLAK: I submit, Mr. Engel, that once
13 the witness has made the identification it will be too
14 late to erase from the jury's mind if the court should
15 later find that the identification was tainted by sug-
16 gestive photographs.

17 MR. PANZER: Your Honor, might I make this
18 suggestion --

19 THE COURT: Sure.

20 MR. PHILLIPS: I notice Henry Salley is now
21 situated smack in the middle of the defendants.

22 MR. POLLAK: That is at my instructions.

23 MR. PHILLIPS: That includes about five or
24 six blacks and a number of other individuals. It seems
25 to me he is in effect getting what he is not entitled to,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta 2962

a lineup, and nothing could be fairer than an in-court identification under those circumstances.

MR. POLLACK: Your Honor, the reason that Henry Salley is sitting in the middle of the defendants is at my instructions, because due to the history of this case I don't want the witness to identify a chair rather than a person.

MR. PANZER: Your Honor, I want to make this suggestion, that when the government gets to the point of the identification, that they make an offer of proof and your Honor can hear it out of the presence of the jury and bring the jury back.

MR. ENGEL: Is this with respect to each defendant?

MR. PANZER: No, Mr. Pollak's client.

Then your Honor can make the ruling whether the identification is tainted.

THE COURT: Will the identification come down right away?

MR. ENGEL: No.

THE COURT: All right, we will start at least.

I don't know whether you gentlemen recognize it, but I have a feeling side-bar conferences tend to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

2962a

annoy the jury. Let us start it and let us get some-
thing done at least.

T5

1 hpl

2963

2 (In open court.)

3 P A S Q U A L E P R O V I T E R A, called as a witness
4 on behalf of the government, being first duly
5 sworn, testified as follows:

6 MR. ENGEL: May I proceed, your Honor?

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. ENGEL:

10 Q Mr. Provitera, you stated your name is Pasquale
11 Provitera. Can you give the Court and jury your middle
12 name?

13 A James.

14 Q Are you ever called by any other name?

15 A James, Jim.

16 Q Where did you grow up, Mr. Provitera?

17 A Closter, New Jersey.

18 Q What is your educational background?

19 MR. LOPEZ: Objection.

20 THE COURT: No, I will permit it.

21 Q You may answer, Mr. Provitera.

22 A High school graduate.

23 Q Where was that?

24 A Northern Valley Regional High School.

25 Q And that is in New Jersey?

hp2

Provitera-direct

1
2 A New Jersey, yes.

3 Q Have you served in the Armed Forces, Mr. Provitera?

4 A Yes, I did.

5 Q Which branch of the Service was that?

6 A The Navy.

7 Q For how long, during what period of time?

8 A From 1958 to 1961.

9 Q Did you receive an honorable discharge?

10 A Yes, I did.

11 Q Since 1961 have you been employed?

12 A Yes.

13 Q In what profession or occupation have you been
14 employed?

15 A Window caulker.

16 Q What briefly does that entail?

17 A It's the caulking around the perimeter of the
18 window, the frame of the window, not the glass.

19 Q Are you so employed now?

20 A Yes.

21 Q With what company?

22 A E & J Caulking Company.

23 Q In what capacity do you serve?

24 A Vice-president.

25 MR. PANZER: Your Honor, could the witness speak

1 hp4 Provitera-direct

2 Q Have you entered a plea in that case, Mr.
3 Provitera?

4 A Yes, I have.

5 Q In which court, if you know?

6 A In Newark.

7 Q Is that federal court?

8 A Yes.

9 Q What was your plea, if you know?

10 A Guilty.

11 Q To how many counts?

12 A Two counts.

13 Q And have you been sentenced?

14 A No, I haven't.

15 Q Was that the only time you have been arrested,
16 Mr. Provitera?

17 A Yes.

18 Q Calling your attention, Mr. Provitera, to in
19 or about January of 1972, did you have occasion at any
20 time during that period of time to discuss narcotics with
21 anyone?

22 A Yes, I did. I discussed it with Harry Panni-
23 rello.

24 Q Could you tell me the circumstances the first
25 time you did discuss narcotics with Harry Pannirello?

1 hp5 Provitera-direct

2 A Harry told me that he was dealing in narcotics
3 and that if I wanted to I could deliver the packages for
4 him and he would pay me \$200 a delivery.

5 Q Where did this discussion take place, if you
6 remember?

7 A I don't remember. It could have been my home
8 or his home.

9 Q And after this discussion did you have occasion
10 to deliver any of the packages you have just spoken of?

11 A Yes, I did.

12 Q When was that, if you recall?

13 A It was approximately two or three weeks after
14 the discussion.

15 Q Did anything occur before that with respect to
16 Harry?

17 A Yes. Harry told me that before I could start
18 working for him he would have to take me to meet his partner.

19 Q And who was that?

20 A Pat Dilacio.

21 Q Did you meet his partner?

22 A Yes, I did.

23 Q And how soon after the initial telephone conver-
24 sation did you meet his partner?

25 A Telephone conversation?

1 hp6 Provitera-direct

2 Q Excuse me.

3 THE COURT: I am a little lost.

4 Q After the initial conversation -- I am sorry --
5 whether it was by telephone or whatever it was.

6 A Approximately a week.

7 Q Where did the conversation take place with Mr.
8 Dilacio?

9 A At his apartment.

10 Q And where is that, if you know?

11 A It's on Pelham Parkway in the Bronx.

12 Q Could you tell us who was present?

13 A Harry Pannirello was there, I was there, Pat
14 Dilacio, and there was a few other people that I didn't know.

15 Q What was discussed at this meeting, if you recall?

16 A Nothing really. It was just an introduction.

17 Q And you left and returned home, is that it?

18 A Yes.

19 Q On your way home, did Harry have any discussion
20 with you at that point?

21 A On the way driving home he told me that I would
22 probably start delivering within a week or so and he pointed
23 out an apartment to me on University Avenue and he said that
24 this would be one of the places that I would be going.

25 Q Where were you when he pointed out the apartment,

hp7 Provitera-direct

if you recall?

A On the Cross Bronx Expressway.

Q After this meeting did you speak again with Harry?

A Yes, I did.

Q How soon after that was your conversation?

A Approximately a week.

Q What month? Can you remember what month this was?

A It was either late January or early February.

Q Could you tell us what the conversation consisted of?

A Harry told me that he would put a package under the front seat of my car and -- no. I am sorry.

On the first occasion Harry told me that he would pick me up and take me to this apartment where I would be delivering and make the introductions to me.

Q Did he thereafter take you?

A Yes, yes. He picked me up that evening and he drove me over to University Avenue, where we parked the car.

We parked the car, he took a brown paper bag out from underneath his front seat and he gave it to me and instructed me to put it under my jacket and bring it into the apartment.

1 hp8 Provitera-direct

2 He told me that there were two bags -- two
3 packages inside the paper bag, one was bigger than the
4 other. He said when he asked for it to give him the bigger
5 bag.

6 Q And then you arrived at University Avenue.
7 What happened then?

8 A Well, after I took the package we went to the
9 entrance of the apartment building and Harry rang on the
10 bell. On the intercome someone asked who it was. He
11 said Harry and the buzzer was pushed and we went into the
12 elevator.

2 13 Q Do you recall where this building was on Univer-
14 sity Avenue?

15 A It's -- I don't know the address, but it's right
16 off -- like you come off a bridge and it's like right there,
17 you know, to the side of the exitway like off the bridge.

18 Q After you were buzzed in did you thereafter go
19 inside the building?

20 A Yes, we did.

21 Q Where did you go?

22 A We went on the elevator. We rode up to the 11th
23 floor.

24 Q Did you thereafter go into an apartment?

25 A Yes.

1 hp9 Provitera-direct

2 Q Tell us what occurred then.

3 A We went down -- after we got out of the elevator
4 we went all the way down the corridor to the apartment.
5 Harry knocked on the door and we were let in.

6 Q Do you remember where this apartment was in
7 respect or the floor plan?

8 A It would be the northwest corner of the building.

9 Q On the 11th floor?

10 A Yes. The end apartment.

11 Q Can you tell the Court and jury, please, what
12 happened after you rang the bell?

13 A We were let into the apartment. Harry
14 introduced me to Hattie Ware and Butch Ware and he asked
15 Hattie if Basil was there and she said he wasn't, we should
16 sit down and wait for him to arrive.

17 Q Mr. Provitera, do you see Hattie Ware in the
18 courtroom today, and if so, would you tell us where she is
19 and what she is wearing?

20 A Yes. She is sitting right over there with the
21 pink blouse on.

22 Q Right over where?

23 A Right over there.

24 MR. ENGEL: May the record reflect the witness
25 has identified the defendant Hattie Ware.

hp10

Provitera-direct

Q Do you see ButchWare in the courtroom today?

A Yes. He is sitting next to Harry.

No, no, that's not Butch.

Q Would you stand up, Mr. Provitera, and take a look all the way around the courtroom.

A Butch Ware is over there.

Q Could you describe what he is wearing?

A Green, green short-sleeved shirt.

MR.ENGEL: May the record reflect that the witness has identified the defendant William Alonzo.

MR. KING: If your Honor please, may I respectfully ask Mr. Engel not to be so close to the mike. It seems to come across distorted to me, anyhow.

MR.ENGEL: That was more or less for your benefit, Mr. King.

THE COURT: Unfortunately, law schools do not give lessons in mike presence.

All right. Go ahead, Mr. Engel.

Q You testified you were in the apartment and that Butch Ware and Hattie Ware were there.

Could you tell us what occurred after Harry asked Hattie whether Basil was there?

A Hattie said that he didn't arrive yet, to sit down and wait for him to come, which we waited about five

1 hpl1 Provitera-direct

2 minutes and then Basil came.

3 Q What happened thereafter?

4 A When Basil came Harry, Basil, Butch and myself
5 went into the bedroom, where Harry asked me for the package.
6 I took it out of the brown paper bag and I gave it to him
7 and then I put the bag back under my coat.

8 We waited there, we stood there for a short time,
9 four, five minutes, and then we left the apartment.

10 Q In which room, if you recall, did this occur?

11 A Butch's bedroom.

12 Q And the bag which you gave to Harry, to whom did
13 he give that, did you say?

14 A To Basil.

15 Q Was there any money exchanged at this meeting,
16 to your recollection?

17 A I don't remember.

18 Q What happened after that, Mr. Provitera?

19 A After that we left the apartment and Harry said
20 that we would be going down to the seventh floor, where I
21 would meet Al Greene, and he would give him the other
22 package. I gave Harry the package on the elevator.

23 We went down to the seventh floor and we knocked
24 on the door and Al Greene let us in.

25 Q Where was his apartment located on the seventh

hp12 Provitera-direct

floor, if you can recall?

A It was in the opposite direction of -- when you got off the elevator, from the other apartment. It was in the front of the building. It would be the west side of the building, approximately half-way down the corridor.

Q When you went inside the apartment, what happened?

A Al Greene let us in. Harry told me to sit there and wait for him and him and Al Greene went into the bedroom.

Q Did you wait?

A I waited. I sat there for five minutes or so and I got up and I walked into the bedroom to see what was keeping him.

Q What did you observe in the bedroom?

A Harry and Al Greene were standing by the bed counting money and when I walked in Harry told me to wait outside. I went back outside and waited.

Q Did Harry thereafter come outside?

A Yes, he came out shortly after and we left.

Q Was he carrying anything when he came outside?

A Yes. He was carrying a paper bag.

Q Did you have occasion then or later to see what was in the paper bag?

A Yes. There was money in the bag.

1 hpl3 Provitera-direct

2 Q Did Harry later give you any money from that
3 package?

4 A Yes, he did.

5 Q And how much was that?

6 A \$200.

7 Q Did you thereafter leave and go home?

8 A Yes.

9 Q Was Harry with you?

10 A Yes. Harry drove me home.

11 Q Did he say anything to you?

12 A Yes. He told me that I wouldn't be delivering to
13 Al Greene. He said that Al Greene said that he didn't want
14 me or anyone else in his apartment, enough people were
15 there already, and he didn't want anyone new.

16 Q Thereafter, Mr. Provitera, did you have occasion
17 to deliver narcotics again?

18 A Yes.

19 Q When was this, if you can place it in a month,
20 during 1972?

21 A February.

22 Q Could you tell us what happened?

23 A Approximately one week later Harry told me that
24 I would make another delivery to Hattie Ware's. He said
25 he would put the package under the front seat of my car

by my home and I was to drive to Hattie Ware's, where I would meet Basil and give him the package.

Q Did you thereafter go to Hattie Ware's apartment?

A Yes, I did.

Q What happened when you went there?

A I went to the apartment. I took the package from under my seat in my car. I put it in my jacket.

I went, I rang the buzzer, and I was let in through the intercom and I went up to Hattie's apartment.

Q Who was there, if anyone, at Hattie's apartment?

A Hattie was there and there was a few neighbors.

Q What happened when you went inside?

A I asked if Basil was there yet and Hattie said he wasn't. to sit down and wait, and I did.

I waited about 10 or 15 minutes or so and Basil didn't show up and Hattie called me into her bedroom and told me to leave the package with her, that she would see that he got it, which I did, and then I left.

Q Did you have occasion some time thereafter to go back again to University Avenue?

A Yes. Within a week or two weeks again after that Harry called me up and told me that a package would be under the front seat of my car the same way and to drive to University Avenue, where I would meet him.

3 2 Q And did you meet Harry there?

3 A Yes.

4 Q Where did you meet him?

5 A In front, in front of the apartment, on the
6 street. I parked my car and as I was parking Harry pulled
7 up and parked his and I got out and I went over to his car
8 and he told me to get the package.

9 I went back, I got the package, I put it under my
10 coat, and we went to the apartment.

11 We rang the bell and there was no answer. So we
12 went back to the car and Harry told me to put the package
13 back in my car and go sit with him in his, which I did.

14 Q Do you recall what time of day or night this was?

15 A It was approximately 8 o'clock at night.

16 Q What happened after that?

17 A We sat in Harry's car and we saw Basil pulled up
18 in his car.

19 Q What kind of car was that, do you recall?

20 A A Cadillac.

21 Q And after he drove up what happened?

22 A When he drove up he like double-parked -- it was
23 snowing out -- and we got out of the car and Harry went over
24 to talk to him and he said, "Come on, let's go sit in my
25 car," and ask they were walking back to Harry's car Harry

told me to go to my car and get the package.

Q Do you recall what Basil was wearing that night?

A He had on a furcoat.

Q Did you go back to Harry's car thereafter?

A Yes. I got the package from my car and I went back to Harry's car and I gave the package to Basil and then I left.

Q Was there any money exchanged at this point?

A I don't know.

Q Did you thereafter at some time receive any money from Harry?

A Yes.

Q How much was that?

A \$200.

Q Thereafter, Mr. Provitera, did you have occasion to return once again to University Avenue?

A Yes, I did.

Q Do you recall what month that was?

A It was either late February or early March.

Q Did Harry call you?

A Yes.

Q What did he say to you?

A He told me that I would find a package again under my front seat of my car and to take it to Mattie Ware's

apartment, where I would meet Patty.

Q And this is Patty --

A Dilacio.

Q Did you thereafter go to Hattie Ware's apartment?

A Yes.

Q And who was there, if you recall?

A No one, just Hattie. I asked if Patty was there yet and she said no. We waited for Patty to arrive.

Q Did he come? --

A Yes.

Q And what happened then?

A He asked me if I had the package. I said that I did. I gave it to him and he asked Hattie if she would do him a favor and take it to Al Greene's apartment. He said he didn't feel like going down.

She said she would and Patty gave her the package and he handed her some money and she went down, she left, left me and Patty there.

Q Did she come back?

A Yes.

Q Was there any conversation at that point?

A Patty asked her if she -- everything went okay, if she gave it to Al. She said yes. And then we left.

Q Was there any conversation while she was gone

1

hp

Provitera-direct

2980

2

between you and Mr. Dilacio?

3

A I asked him how come he gave her the money and he said she was doing him a favor.

5

Q Did you thereafter leave?

6

A Yes.

7

Q Mr. Provitera, did there come a time shortly after this or in this general time frame when you took a drive with Harry?

10

A Yes, I did.

11

Q How did this occur?

12

A One night Harry stopped by my home and asked me if I would -- wanted to take a ride with him. I said sure, I would.

15

He told me we were going to Yankee Stadium, he had to meet Al Greene, he was going to try and set up a different delivery spot.

18

Q Did he say why?

19

A I don't --

20

Q Did he say why he was going to set up a different delivery spot?

22

A Yes. Al Greene didn't want anybody going to his apartment any more and Harry figured, you know, they would set up a different place.

25

Q Did you go to the Yankee Stadium that night?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hp

Provitera-direct

2981

A Yes, I did.

Q Did you wait for Al Greene that night?

A Yes.

Q Where did you wait for him?

A In front of the stadium.

Q What month of the year would this have been, do
you think?

A This was probably April or May. It was cold out,
chilly out, but there was a baseball game going on. It was
the beginning of the baseball season.

1

2

Q And did Al Greene come?

3

A No, he didn't.

4

Q What happened after that?

5

A We waited about an hour and then he didn't come.

6

so we rode over to Patty's. Harry told Patty that Al

7

Greene didn't show up so Patty said, "Well, the hell

8

with him then," and then we went home.

9

Q Did you at this time, around this time,

10

have occasion to meet a man known to you as Sinatra?

11

A Yes, I did.

12

Q Can you tell us where and when you met Sinatra?

13

A About this same time Harry told me that the

14

package wouldn't be put in my car any more, I would

15

pick it up from this guy named Sinatra, and he drove me

16

over his home to meet him.

17

Q And where was --

18

MR. KING: Objection and ask that the

19

answer be stricken.

20

THE COURT: No, I will permit it.

21

Q And where did you drive?

22

A To Rosedale Avenue in the Bronx.

23

Q What happened when you arrived?

24

A Harry knocked on the door and we were let in,

25

went upstairs, and Patty was there and I was introduced

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cta2

Provitera-direct

2983

to Sinatra.

Q Mr. Provitera, do you see the man known to you as Sinatra in the courtroom today?

A Yes.

Q Would you please stand up, point him out and tell us where he is sitting and what he is wearing?

A In the corner, with the white jacket (indicating).

Q Did you ever come to know the defendant Sinatra by any other name?

A Yes.

Q And what was that?

A John Gamba.

MR. ENGEL: May the record reflect the witness has identified the defendant John Gamba.

Q At your first meeting with Sinatra which you just testified to, will you tell us what occurred?

A Well, we just sat around, you know, talked.

Q Who was present?

A Patty, myself, Sinatra and Harry.

Q What did you say?

MR. KING: I am sorry, would you repeat that answer, please?

THE COURT: Mr. Reporter --

1

cta3

Provitera-direct

2984

2

A Patty, Harry, myself and Sinatra.

3

Q What did you discuss, if you recall?

4

A I don't recall the discussion.

5

Q At some point after this, Mr. Provitera, did

6

you have occasion to return to Rosedale Avenue?

7

A Yes, I did.

8

Q And what was to Sinatra's?

9

A Yes.

10

Q How did that come about?

11

A A couple of days after -- after I was there

12

the first time I was home one night and Harry called me

13

And he told me to meet him at Sinatras.

14

Q During the first meeting when you went to

15

Sinatra's, on your way home did you have any discussion

16

with Harry?

17

A Yes.

18

Q And what was that discussion, if you recall?

19

A As we were driving, like, you have to go around

20

the corner to get back onto the Cross Bronx Expressway,

21

and Harry pointed out a spot to me around the corner and

22

he said this is where I would be meeting Basil from

23

now on.

24

Q And then you returned to Rosedale Avenue, to

25

Sinatra's house. Can you tell us then what occurred?

A Harry called me and asked me to meet him at Sinatra's, and I drove over and Sinatra let me in, we went up to the living room.

MR. KING: May we have a time, please, Judge?

Q Do you recall when this was, what month it was?

A This was right after the Yankee Stadium, right in there. That would be April or May.

MR. SIEGEL: Your Honor, may we have a year.

THE COURT: I believe we are talking about 1972.

Is that correct, Mr. Provitera?

THE WITNESS: Yes.

Q When you went inside did you see Harry?

A Yes.

Q And what was he doing?

A He was sitting on the couch and he was working on the coffee table. The coffee table was a big, glass coffee table in front of him. He had a scale on it and a strainer and he was mixing heroin with mannite.

MR. SIEGEL: Objection, Your Honor.

THE COURT: No, I will permit it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta5

Provitera-direct

2986

Q Could you describe what he was doing?

A He was mixing it with two playing cards, jumbling it up together and taking it, pushing it through the strainer and jumbling it again, and then he had plastic bags that he was putting them in and weighing them on the scale.

Q After he weighed them on the scale, what did he do with them.

A He would hand the packages to Sinatra. Sinatra was on the floor with a heating machine where he would put the package in the machine and then it would seal the plastic.

Q Do you recall how many packages there were?

A I don't recall the exact amount. It was more than one. It was two or three.

Q Did you thereafter have occasion to see Sinatra again?

A Yes.

Q And when did this occur?

A Approximately a week or so later.

Q And what happened?

A Harry called me and told me to pick up a package from Sinatra's and go around the corner where I would meet Basil and give him the package.

1

2

Q And what did you do?

3

4

5

A I went to Sinatra's and I bot the package and then I drove around the corner and waited for Basil to arrive.

6

7

Q When you got the package what did you do with it?

8

9

10

11

12

A I took it out to my car and I put it in the tool box that I had in my car, I drove around the corner and waited. When I saw Basil pull up I took the package from the tool box, I put it under my coat and I walked over to his car and I gave it to him.

13

14

15

16

Q Was he alone?

A No, there was a woman with him.

17

18

19

20

Q Did you have occasion at any time thereafter to return to Sinatra's house?

A Approximately a week or two after that Harry called me and told me to pick up a package from Sinatra's again and go around and give it to Basil again, which I did.

21

22

23

24

25

Q Was Basil alone this time?

A No. The woman was with him again.

Q At or about this time, Mr. Provitera did you have occasion to talk to Harry about going to New Jersey?

A Yes. After the last delivery to Basil, a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

qca Provitera-direct 2938
couple of weeks had passed and there was no more trans-
actions. Harry told me he would take me out to
New Jersey where he met Tennessee, he would meet
Tennessee and I would be delivering packages out there.

Q Where did you drive to, if you recall?

A Howard Johnson's on Route 46.

Q And what happened when you arrived?

A Well, Harry called me one day and asked me to
take a ride with him out to 46 where he had to meet
Tennessee, and I rode out with him and a car pulled up
and Harry went out and talked to them. I stayed in
the car.

MR. POLLAK: Can we fix a time for this
meeting, your Honor?

THE COURT: Yes. Let us see if we can
fix a time for it.

Mr. Provitera, about when did this happen
that you went out to Howard Johnson's on 46th to meet
Tennessee?

THE WITNESS: This was approximately May.
It was on -- it was in the afternoon. It was on a week-
end. It was Saturday or Sunday.

Q You testified that you no longer dealt with
Basil. When you did deal with Basil where did you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

qca Provitera-direct 2938
couple of weeks had passed and there was no more trans-
actions. Harry told me he would take me out to
New Jersey where he met Tennessee, he would meet
Tennessee and I would be delivering packages out there.

Q Where did you drive to, if you recall?

A Howard Johnson's on Route 46.

Q And what happened when you arrived?

A Well, Harry called me one day and asked me to
take a ride with him out to 46 where he had to meet
Tennessee, and I rode out with him and a car pulled up
and Harry went out and talked to them. I stayed in
the car.

MR. POLLAK: Can we fix a time for this
meeting, your Honor?

THE COURT: Yes. Let us see if we can
fix a time for it.

Mr. Provitera, about when did this happen
that you went out to Howard Johnson's on 46th to meet
Tennessee?

THE WITNESS: This was approximately May.
It was on -- it was in the afternoon. It was on a week-
end. It was Saturday or Sunday.

Q You testified that you no longer dealt with
Basil. When you did deal with Basil where did you

ONLY COPY AVAILABLE

1

gta

Provitera-direct

2939

2

get the packages which you gave to him?

3

A From Sinatra.

4

Q This was when you delivered it to him around

5

the corner --

6

A In the car, yes.

7

Q Some time thereafter, after you drove out

8

with Harry to Route 46, did you return to Route 46?

9

A Yes. Approximately a week or so after that

10

time Harry told me to pick up a package from Sinatra and

11

meet him at the Howard Johnson's on Route 46.

12

Q Did you go to Sinatra's thereafter?

13

A Yes.

14

MR. KING: Excuse me.

15

May we have a time on that answer, please?

16

THE COURT: It is about a week later from

17

the other time, from what I gather.

18

Q Can you put this in a month, Mr. Provitera?

19

A This is May.

20

Q What happened after you received the phone

21

call from Harry?

22

A I drove to Sinatra's, where I picked up the

23

package. I put it in my tool box in my car and I

24

drove out to the Howard Johnson's to meet Harry.

25

Q Did you meet Harry there?

1 A Yes, I did.

2 I pulled up alongside of his car and he told
3 me to stay in my car and follow him.

4 Q And did you follow him?

5 A Yes.

6 Q Where to?

7 A We -- about a half a mile down the road from
8 Route 46 was a cutoff. Like you come off the overpass
9 and underneath the underpass there was a bar there, the
10 Jungle Bar or the Jingle Bar.

11 We pulled into the parking lot at this Jungle
12 Bar and Harry told me to wait with him in his car, which
13 I did.

14 Q And how long did you wait?

15 A Not long. Five minutes or so.

16 Q And what happened then?

17 A A car pulled up. It was a little Corvair,
18 maroonish Corvair, pulled alongside of us, and four,
19 five people got out and a couple stayed by the car, a
20 couple went into the bar.

21 Harry told me to get the package and bring
22 it by the car.

23 I went to my car, I took the package out of
24 the toolbox and I walked over to the front of the Cor-
25 -

1 etc.

Provitera-direct

2991

2 vair, which was the trunk. The trunk is the front of
3 the car. There was two, three guys standing there and
4 I handed the package to Harry and Harry told me to go.

5 Q Mr. Provitera, could you tell us what kind of
6 a car you had? Describe it a little bit.

7 A It was a 1964 Ford stationwagon, white. It
8 was all beat up and it had all my tools in it and ladders
9 on the roof and all.

10 Q Did you thereafter return to the Route 46 area
11 in New Jersey at some point and, if so, could you tell
12 us when it happened and what happened?

13 A Yes. Approximately a week or two weeks
14 later --

15 Q This would be what month, Mr. Provitera?

16 A This is the end of May or the beginning of June.

17 Q What happened?

18 A Harry had pointed out a spot to me near this
19 Jungle Bar, it's down the road, a couple of miles down
20 the road. It was a factory. And Harry told me to
21 go and pick up the package and park by this factory and
22 leave the package in my toolbox in the car and go sit --
23 there was a bar near there. He said, "Go stay in the
24 bar for a half hour or so and then come home." He
25 says, "You know, check, make sure the package is gone

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cta

Provitera-direct

2992

and then come home."

Q Did Harry tell you how long you should wait?

A Yes, a half hour. I was to leave at 3:30.

Q Did you go to the factory which you just described?

A Yes, I did.

Q And what happened?

A I parked the car and I went and I sat in the bar till a half hour or so and then I gave it, like, another five minutes and then I went to the car, I checked the box, the package was gone, and I drove home and I called Harry and told him that everything went okay.

Q In or about this time did you have occasion to return to Grand Avenue?

A Yes, on the next delivery, which was approximately a week or two later. Going down the road the other way is a Dairy Queen or a Carvel, and Harry told me to pick up the package and meet him there.

Q Where did he tell you to pick up the package, if you recall?

A It was some kid named Franky.

Q And where did he live?

A He lived by the Throggs Neck Bridge.

1

gta

Provitera-direct

2993

2

Q Did you thereafter drive to the Dairy Queen

3

the Carvel?

4

A Yes, I did.

5

Q What happened when you arrived?

6

A I met Harry there and I waited in his car

7

with him, and then a car pulled up, I didn't see the car

8

or anything, but Harry told me, "They are here." He

9

says, "Go get an ice cream or something" and, you know,

10

just "Go get an ice cream."

11

So I wanted on line. There was a big line,

12

I remember. I wanted on line for 10, 15 minutes or

13

so and then Harry came over and waited with me. He said,

14

you know, everything went fine, and we got an ice cream

15

and left.

16

Q In or about this time did you have occasion

17

to deliver another package to New Jersey?

18

A Yes.

19

THE COURT: Before we get into that, Mr.

20

Engel, would you come up here, please.

21

(Pause.)

22

Q Mr. Provitera, can you tell me where the

23

Jingle or Jungle Bar is located?

24

A It's on Route 46. I don't know the town.

25

It might be Leonia or Ridgefield, New Jersey. It's on

ONLY COPY AVAILABLE

Grand Avenue.

Q And the Carvel stand is also on Grand Avenue?

A Yes.

THE COURT: I thought it was the Dairy Queen.

Q Was it the Carvel or the Dairy Queen on Grand Avenue?

A Yes.

Q At or about this time did you have occasion to return to New Jersey to deliver any packages?

MR POLLAK: Can we have what "at or about this time" means, your Honor, with a date and a month?

THE COURT: Yes, sure.

Q If the answer is yes, will you say when this occurred?

A Could you repeat that?

Q Did you return to New Jersey after this some time?

A Yes, I did.

Q When was the next time you returned to New Jersey?

A Approximately a week after.

Q Do you recall what month this was?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Provitera-direct

2995

A June.

Q And what were the circumstances of this visit?

A Harry told me to pick up the package from Franky and meet him out at the Howard Johnson's.

Q And did you go to Howard Johnson's?

A Yes, I did.

Q And did you meet Harry?

A Yes.

Q What happened after that?

A I met Harry there and he introduced me to Allen. He said to give Allen the package and that I would be delivering to him for now on.

Q Did you give Allen the package?

A Yes.

Q Have you since come to know Allen by any other name, Mr. Provitera?

A Yes.

Q What is that?

A Warren Robinson.

Q Mr. Provitera, would you stand up, take a look around the courtroom and tell us if you see Warren Robinson or Allen in the courtroom?

A Yes. He's sitting right over there with the brown tie (indicating).

1 gta

Provitera-direct

2996

2 MR. ENGEL: May the record reflect the wit-
3 ness has identified the defendant Warren Robinson.

4 MR. BRICHLON: We will stipulate it is the
5 same person that he previously identified as Butch Ware.

6 MR. ENGEL: May the record reflect that the
7 witness identified William Alonzo?

8 THE COURT: Yes. That happened before,
9 and this time he did identify Warren Robinson, and I
10 think at this time we are going to take our lunch break.

11 All right, ladies and gentlemen, would you go
12 with the marshal, please.

13 (The jury left the courtroom.)

14 THE COURT: All right, Mr. Provitera, go back
15 to the witness room, please.

16 (The witness left the courtroom.)

17 MR. ENGEL: Your Honor, could I ask that
18 your final remarks be read back --

19 THE COURT: My final remarks?

20 MR. ENGEL: Just before the jury was excused.
21 It was my impression that you said that the defendant
22 had identified Warren Robinson.

23 THE COURT: Did I? Maybe I mispoke.

24 (Record read.)

25 MR. ENGEL: What appeared to me, your Honor,

1 was that you identified the defendant Robinson's lawyer's
2 remark that he identified Warren Robinson as Butch Ware
3 previously when, in fact, the witness, after pointing
4 to Mr. Robinson, immediately changed his mind without
5 any suggestion from me and identified the defendant
6 Butch Ware or William Alonzo.
7

8 MR. SUNDEN: Your Honor, I take exception --

9 MR. LEIGHTON: I would say it did not happen
10 immediately, it was after Mr. Engel hesitated, which
11 possibly put the witness on notice that maybe he made an
12 incorrect identification.

13 THE COURT: No, he said immediately, "No,
14 that's not Dutch."

15 MR. SUNDEN: I feel if Mr. Engel is going
16 to characterize that, that the record should reflect the
17 fact that the witness did identify Warren Robinson as
18 William Alonzo, and then may have changed his mind very
19 quickly thereafter, but there was a clear identifica-
20 tion.

21 MR. ENGEL: For the record, he did change
22 his mind.

23 THE COURT: Yes. It is in the record,
24 don't worry about it. All right?

25 MR. LEIGHTON: Your Honor, before you make

cta

Provitera-direct

2998

a final statement, could your Honor state for the record that Warren Robinson is seated next to Miss Hattie Ware and has been seated next to Hattie Ware at the time this witness identified Warren Robinson as Dutch Ware.

THE COURT: I believe he was.

MR. LEIGHTON: Thank you.

THE COURT: In fact, I think they have been seated in those positions through most of the trial.

MR. LEIGHTON: I believe the witness stated that Dutch Ware is seated next to Miss Hattie Ware.

THE COURT: I am well aware of that. I was here.

MR. SUNDEN: And will your Honor allow the record to further reflect the fact that Mr. Alonzo is seated maybe 20 feet away around the corner of the L-shape of the counsel table and maybe --

THE COURT: You are not very good on distance. All right. But it is around the corner and it is a table away.

The fact of the matter is he did make the identification and I don't know what we are cluttering up the record with all of this characterization for.

MR. PHILLIPS: I just think that the record should also reflect that there are 17 defendants

ONLY COPY AVAILABLE

ONLY COPY AVAILABLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cta Provitera-direct 2999

and 17 counsel sitting either at the table or directly behind them.

THE COURT: No, there are 18 counsel, believe it or not.

MR. PHILLIPS: I think Mr. Greene having been severed made it 17, your Honor.

THE COURT: Check again. There are 18 counsel and 17 defendants.

Let us go to lunch.

MR. SUNDEN: Judge, I didn't ask for that further comment by Mr. Phillips, but if that is a factor I would also like the record to reflect the fact that at the time the identification was made I believe there were five black people, including Hattie Ware, of defendants sitting at the table out of the 17.

THE COURT: All right. Two o'clock, gentlemen.

(Luncheon recess.)

AFTERNOON SESSION

2.00 P.M.

(In the robing room.)

THE COURT: My problem is a request was made for a Wade hearing this morning and again yesterday. I want to make sure I have clear in my mind on what basis the request is being made.

It's true that one witness was unable to identify your client, Mr. Pollak. That doesn't mean that there is any showing of taint in this situation. You suggested this morning that the government was unethical in asking a witness to pick out a picture of a particular defendant from a group of pictures. I don't consider that in any way improper. In fact, I would be surprised if the government did not do it because in that way they could end up indicting and trying somebody who possibly had nothing to do with the case.

What I want to know is what is the basis for your request for a Wade hearing.

MR. POLLAK: Let me answer the second point first. It would be very brief.

With regard to the second point, my position is not that it was improper for the government to show a potential witness a picture of somebody they thought was

1 hp2

2 a potential defendant. My implication as to improper conduct
3 was in failing to advise defense counsel that the witness
4 had made a photograph identification.

5 THE COURT: All right.

6 MR. POLLAK: This leads me into the answer to
7 the other branch of your Honor's question, and that is this,
8 on the basis for my Wade hearing. I have a case, in fact,
9 Mr. Curran's office was good enough to furnish it to me
10 in another case, U.S. vs. Evans, which came down in
11 September, 1973, I believe. I have it with me. I didn't
12 reproduce it. It's a case in which the Second Circuit
13 outlines the rules as to out-of-court identification and
14 they indicate in no uncertain language, even though they
15 allowed the identification, the in-court identification
16 in the Evans case, they indicate in no uncertain language
17 that there are many cases in which an out-of-court
18 identification, if it is tainted by suggestiveness, can
19 so affect the situation that the witness when he takes the
20 stand is identifying not the person he saw at the time of
21 the crime but rather the photograph that he was shown
22 subsequent to the crime and before his in-court identifica-
23 tion.

24 Now, the Court further adds that in situations
25 like this it has to be decided on a case-by-case basis.

1 hp3

2 Of course, at this point I have no knowledge whatsoever
3 of whether the pictures were in any way suggestive or
4 whether the whole process was so tainted, as the Court
5 discusses in the Evans case, but the only way I can
6 possibly find out is on the basis of a Wade hearing.

7 Now, I would suggest again, with regard to what
8 the Court might think was strong language on my part in
9 suggesting improper conduct, that if they are required to
10 give us all kinds of reports and so on, certainly something
11 as vital as an out-of-court identification is something that
12 the government should make available to defense counsel,
13 and I think if it's not in the letter of 3500, it's certainly
14 within the intent.

15 THE COURT: I don't think it is within the letter
16 at all. In any event, they don't have to do it, according
17 to 3500, until after the guy takes the stand and testifies
18 on direct.

19 It's true that I changed the rules around a little
20 in this case, but I don't see it. My problem is do we have
21 any basis whatsoever for asking for the hearing other than
22 the fact that your client was not identified by Panni-
23 rello.

24 MR. POLLAK: Yes. The basis is that as a result
25 of the government's motion to bring in Pannirello's out-

1 hp4

2 of-court identification I became alerted to the situation
3 and I made due inquiry to the Court and in the side bar
4 conference this morning the government admitted that this
5 witness had made an out-of-court identification.

6 Armed with this fact I want to pursue it further
7 and see whether that out-of-court identification was proper
8 and whether it so taints whatever in-court identification
9 that he may make that the in-court identification would
10 not be permissible.

11 THE COURT: You want to be heard?

12 MR. PHILLIPS: Your Honor, I represented at the
13 side bar this morning, I believe, that the out-of-court
14 identification by this witness as well as by the witness
15 Pannirello consisted of picking the defendant Salley's
16 photograph of 20 photographs, all of whom were black males
17 shown on a prior occasion some time in the middle of 1973.
18 That is the factual basis for the out-of-court identifica-
19 tion and thus the indictment of the defendant Salley in this
20 case.

21 It remains to be seen whether this witness is
22 going to be able to pick out the defendant Salley in the
23 courtroom, which consists of a number of blacks as well
24 as whites sitting both at counsel table and behind it.
25 I can't imagine a fairer line-up, I suppose. In fact,

1 hp5

2 maybe even the photographic identification might be fairer
3 because it was 20 blacks rather than five or six. But
4 certainly the five or six sitting there in the courtroom
5 comes within the guidelines of the Supreme Court's
6 decision in U.S. vs. Simmons, which held that there should
7 be at least five photographs shown.

8 THE COURT: Where was the identification made,
9 the photographic identification?

10 MR. ENGEL: It was made in New York, your Honor,
11 in the middle of July last year.

12 MR. PHILLIPS: At the office of the Drug
13 Enforcement Administration.

14 MR. ENGEL: At the office of the Drug Enforcement
15 Administration.

16 THE COURT: Some agent I assume showed him the
17 pictures.

18 MR. ENGEL: That's correct.

19 THE COURT: Where is the agent?

20 MR. ENGEL: John Nolan. Fred Moore was present.

21 MR. PHILLIPS: Where is the agent is the question.

22 MR. ENGEL: He is in the witness room.

23 THE COURT: Where are the pictures?

24 MR. ENGEL: On my desk out there.

25 THE COURT: Do you have them?

1 hp6

2 MR. ENGEL: Yes.

3 THE COURT: I guess the easiest thing to do is
4 to have the hearing right now, get it over and done with.

5 MR. LOPEZ: Your Honor, if we are discussing
6 this question of identification, I have asked Mrs. Rosner
7 to answer the government's memorandum with regard to the
8 Di Napoli situation and I think she would like to address
9 herself to you and make a few comments.

10 MR. PHILLIPS: Before Mrs. Rosner commences,
11 may I suggest that perhaps the hearing be held at 4.30. so
12 we don't hold up the jury.

13 THE COURT: I don't want to hold up the jury.

14 How about it? Do you want to do it now or do
15 you want to do it at 4.30?

16 MR. POLLAK: I would assume that the in-court
17 identification process is going to take place before 4.30
18 if we start with the jury now.

19 MR. ENGEL: Will not take place?

20 MR. POLLAK: That it will.

21 MR. ENGEL: Yes, indeed, it will.

22 MR. POLLAK: In that case I would prefer to hold
23 the hearing now.

24 MR. PANZER: Your Honor, might I just interject
25 this. I think the government is going to be another half-

1 hp7

2 hour, 45 minutes on Privitera. We have one defense attorney
3 that is ready to cross-examine. I don't think that will go
4 to 4.30. The rest of us are going to ask for a short
5 adjournment so that we can go over his testimony today for
6 cross-examination. Maybe it wouldn't be a bad idea to
7 have the hearing now. This way we can use up the whole
8 day.

9 THE COURT: Who is ready to cross-examine?

10 MR. LOPEZ: Leonard King is ready to cross-
11 examine.

12 MR. PHILLIPS: I can't believe defense counsel
13 are not ready to cross-examine Provitera. They have his
14 3500 material for six weeks.

15 MR. PANZER: But I haven't heard what he was
16 going to say until he got on the stand today.

17 MR. ENGEL: That is common.

18 THE COURT: All right.

19 MRS. ROSNER: Your Honor, as I understand it,
20 - and I am sure the government will correct the factual
21 allegations if they are in error, the government now
22 proposes to introduce in evidence the fact of a photographic
23 identification of Di Napoli by the witness Pannirello not
24 in the context of a grand jury proceeding, that is, in an
25 agent's office or in a U.S. Attorney's office somewhere.

1 hp8

2 I have read the authorities supplied by the
3 government and I would submit, your Honor, that their
4 analysis is incorrect for the following reasons:

5 We have a situation where Di Napoli was
6 initially not identified by the witness Pannirello.

7 On the following morning he came into court
8 and did identify Di Napoli.

9 Now, there are two ways, as I understand the law,
10 in which an identification can come into evidence. The
11 De Sisto which the government cites stands for the proposi-
12 tion, I respectfully submit, that prior sworn identification
13 that is, an identification made before the grand jury or
14 one adopted before the grand jury, can come in as evidence
15 in chief of the fact of identification. We don't have
16 that here. We have an identification to an agent which
17 was never adopted or sworn to before the grand jury.

18 Absent sworn testimony under oath concerning
19 the identification there could be evidence of identification
20 which was unsworn and that type can only be used for im-
21 peachment value. I would submit, your Honor, that a couple
22 of hypotheticals I think make the situation here clear.

23 Let's assume that Pannirello had not come back
24 on the day following his failure to identify Di Napoli and
25 identified him. That is, let's assume only step one took

1 hp9

2 place. The witness comes in and cannot identify Di Napoli.
3 The government does not have here a prior sworn identifica-
4 tion but they could in that situation have introduced
5 evidence of his prior photographic identification which
6 was unsworn to impeach him.

7 THE COURT: Yes.

8 MRS. ROSNER: It would go to the jury only as a
9 matter of credibility and not for the truth of the matter
10 asserted therein, that is, the fact of identification.

11 But Pannirello here came in the next day and
12 identified him. So there is nothing to impeach. You
13 can't impeach the witness who has identified the man with
14 the fact that he at some prior time identified him. That
15 is self-serving.

16 So we have a situation, Judge, where there is no
17 prior sworn identification which can come in for the
18 truth of the matter asserted therein. He was never asked
19 to adopt his identification in the grand jury. We have
20 only a prior unsworn identification which De Sisto makes
21 absolutely clear cannot come in for the proof of the matter
22 asserted therein, can only come in for impeachment value.

23 The government can't impeach the witness here
24 because the next day he got on the stand and did in fact
25 identify the witness. What we have here, your Honor,

1 hp10

2 is no more than an effort to, I respectfully submit, improp-
3 ly bolster the witness's identification.

4 Had he never come back and identified Di Napoli
5 he could have been impeached, but in fact he did come in
6 and identify him, and it becomes self-serving, your
7 Honor, to attempt to introduce evidence of the prior
8 unsworn identification.

9 THE COURT: Would you then suggest that I ought
10 to permit the prior identification of Mr. Salley?

11 MR. POLLAK: I would like to be heard on that,
12 your Honor.

13 MRS. ROSNER: Your Honor, let's assume Provitera
14 gets on the stand.

15 Are you speaking now about Pannirello or
16 Provitera?

17 THE COURT: I don't know.

18 MRS. ROSNER: Pannirello has failed to make the
19 in-court identification. If the government has a prior sworn
20 identification De Sisto makes it absolutely clear that they
21 are entitled to elicit that and that would be sufficient
22 evidence to go to the jury. That is evidence in chief.

23 If all they have is a prior unsworn identifi-
24 cation, they can impeach him from here until tomorrow with
25 the prior unsworn identification, but that is not enough

1 hp11

2 to get to the jury, that is not evidence in chief. It can
3 be used for impeachment in the Salley case because you
4 have no in-court identification, but that is still not
5 enough to go to the jury absent other evidence.

6 I hope I haven't destroyed Mr. Salley with that
7 compelling analysis of the law.

tpl

1

2A

2

MR. POLLAK: May I just add this: I agree with all of Mrs. Rosner's analysis, except the last portion.

3

4

I respectfully submit that under circumstances of this kind, a jury cannot possibly distinguish between evidence in chief and evidence that is solely on the question of credibility and the general rule is, De Sisto to the contrary, that you cannot impeach your own witness.

5

6

7

8

9

10

11

12

13

14

15

16

17

Under those circumstances, I would respectfully urge that it be excluded, because while it is true, as Mrs. Rosner says, if Provitera fails to make the identification, then it can't get to the jury, but I submit if Provitera makes an identification, then I think the whole process is severely damaged because I'm sure the jury would treat the photographic identification of Salley as evidence in chief despite any urgings by the Court and charges to the contrary.

18

19

20

21

22

23

24

25

MRS. POSNER: Your Honor, may I add one thing which dawns on me which may be of some help to the Court:

Proof of identification is really no different than proof of any other fact.

Let us assume the witness got on the witness stand and denied a delivery to Di Napoli. The rule in the Federal Court is that any party can impeach his own witness.

tp2

The government could then refresh his recollection or impeach him with a prior inconsistent statement, but the witness says, "Yes, Di Napoli did make a delivery to me," the government cannot use prior statements to bolster that. They then are self-serving. That is really what the government is attempting to do here, to admit a self-serving declaration to bolster what they see to be a problem to their identification.

MR. PHILLIPS: Your Honor, I have no problem with Mrs. Rosner's proposition of law to the effect that you cannot use a prior consistent statement as substantive evidence at least where it is unsworn. However, it is clear both in this circuit and in the D.C. Circuit that one exception to that rule is where the prior consistent statement consists of an out-of-court identification. I cited to your Honor orally the case the other day as well as one other case in our memo this morning.

With respect to De Sisto, there is language in De Sisto which explicitly states that with respect to identification testimony, prior unsworn testimony is admissible, and that is further supported by Judge Friendly's opinion in U.S. v. Miller, where he held not only is the evidence admissible -- the evidence is admissible not only where the defendant or the witness has not been impeached,

1 tps

2 but it is also admissible through independent evidence,
3 to wit, an agent who showed him the photographs or con-
4 ducted the line-up.

5 MRS. ROSNER: Your Honor, I'm not sure --

6 MR. PHILLIPS: And it can be used to bolster
7 and to corroborate a witness's in-court identification
8 even before he is impeached.

9 THE COURT: In other words, it is not impeach-
10 ment, it is corroboration?

11 MR. PHILLIPS: Yes. In other words, it is --

12 THE COURT: All right. I understand it.

13 MRS. ROSNER: I am not sure that these comments
14 are even necessary, but I would just point out, your Honor,
15 that what Mr. Phillips is saying is no more than a prior
16 inconsistent statement can be proved by collateral evidence.
17 That is absolutely true, but that doesn't make identifica-
18 tion a subject any different than proof of any other fact.

19 The fact is the government is not entitled to
20 -impeach Pannirello because he did, in fact, in court
21 identify Mr. Di Napoli, and De Sisto, your Honor, I think
22 the government misinterprets to this extent:

23 There was a prior sworn identification before the
24 grand jury which the Court held was appropriately admitted
25 as evidence in chief and, in fact, changed what prior to

1 tp4

2 that had been the rule in this circuit. But they make it
3 very, very clear that the limitation is to prior sworn
4 testimony and other categories of evidence come within
5 traditional hearsay rules.

6 MR. POLLAK: Might I add, your Honor, I thought
7 I remembered this this morning, I am just looking at the
8 government's brief at the moment, De Sisto is a case in
9 which the witness recanted his court identification on cross-
10 examination. Certainly that is substantially different from
11 the facts we have here where he later was able to identify
12 Di Napoli and was not able to identify Salley at all.

13 It is not a situation where a reluctant witness
14 suddenly on cross-examination recants testimony that he has
15 given, this was a witness obviously cooperative and it
16 was a witness that did not in any way recant his testi-
17 mony.

18 MR. PHILLIPS: It is the exact same situation.
19 The situation is analogous, because this other witness came
20 in after we had assumed by virtue of the fact that he picked
21 Henry Salley out of 20 photographs would identify Salley
22 in the courtroom. He simply wasn't able to.

23 THE COURT: I understand. Don't go any further.
24 All right, let us go out.

25 MR. POLLAK: Your Honor, one more thing. On

1 tp5

2 reflection, since the government plans to go ahead, it
3 might be necessary to go ahead with a Wade hearing on
4 the Pannirello identification as well, I would under those
5 circumstances -- I have changed my own position. I would
6 prefer to go ahead with the case at this point and have
7 the Wade hearing later in the afternoon.

8 THE COURT: That is what the other counsel asked
9 for before and that is what you want to do now?

10 MR. POLLAK: Yes.

11 THE COURT: You got it.

12 (In open court; jury present.)

13 THE COURT: Get the witness.
14
15
16
17
18
19
20
21
22
23
24
25

1, tp6

2 P A S Q U A L E P R O V I T E R A, resumed.

3 THE CLERK: Sir, I remind you you are still
4 under oath.

5 MR. ENGEL: May I proceed, your Honor?

6 THE COURT: Yes.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. ENGEL:

9 Q Mr. Provitera, you were sworn this morning.
10 That oath continues.

11 You testified this morning about several times
12 when you went to Sinatra's to pick up narcotics and take
13 them to Basil and then to New Jersey.

14 On each of those occasions, whom did you receive
15 the narcotics from?

16 A Sinatra.

17 Q When you testified that you went to Howard
18 Johnson, was it the same Howard Johnson's which you went
19 to with Harry initially?

20 A Yes.

21 Q And that is on Route 46?

22 A Yes.

23 Q When you were on the stand this morning you
24 testified you met Allen and Harry told you you would be
25 delivering to Allen.

3017

2

3

4

5

6

8

14

15

16

17

13

20

21

22

23

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

tp

Provitera-direct

3018

Q And when you arrived at Howard Johnson's, did you hand the package to Allen?

A Yes. I pulled up in my car and I was sitting in my car and Allen pulled up. When he saw me he came over to my car and he got in and I gave him the package and he gave me a package of money, but he told me that it all wasn't there, but he was waiting for someone who was flying up from Baltimore with the rest of the money and would I wait an hour or so while this other person came with the money.

Q And did Allen then get out of your car?

MR. LEIGHTON: Judge, could we have a date for that alleged transaction, please?

MR. ENGEL: I believe it has already been given, your Honor.

THE COURT: I thought it was the end of June, but let me check.

Was that when it was, Mr. Provitera?

THE WITNESS: Yes.

MR. ROSENBERG: Can we have the last name of this Frankie if the witness knows?

THE WITNESS: I don't know the last name.

THE COURT: He doesn't know. Okay.

Q I asked you before, what happened after you had

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

tp Provitera-direct

3019

this conversation with Allen?

A Allen went into a room at the motel section of the Howard Johnson's and then I went inside the luncheonette section to wait a while.

I waited half an hour or so, maybe an hour, and I went back and I sat in my car and I didn't see anybody around, so I went up to the room that I saw Allen go into and I knocked on the door and there wasn't any answer.

Q What did you do then?

A I called up Patty and I told Patty that I was sitting there with a bag of money and that Allen said he would be back with the rest of it, but he wasn't there and I didn't want to sit there all night with the bag of money, so Patty told me to go home and bring him the money the next day.

Q Did you bring him the money the next day?

A Yes, I did.

Q And what happened when you did that?

A I brought the money over to Patty and he told me to keep calling the numbers and try and get in touch with Allen.

Q Do you know how much money there was?

A To the best of my recollection, it was around \$9000.

Q Did you yourself count the money?

A I was there when Patty counted it.

Q After this conversation with Patty, could you tell the jury and the Court what happened?

A Well, then for the next couple of days I tried calling the numbers that I was given. One was a New York number and I called, someone answered, I asked if they had heard from Allen or if Allen was around, and they said no. I says, "Well, if you get in touch with him, tell him that Harry called and I'll call back the following night."

I tried again the next night and still they didn't hear from Allen.

I tried the Baltimore number and the operator told me that it was -- the number wasn't working.

Q When you spoke to the woman on the New York number, you said to tell Allen that Harry called?

A Yes.

Q Did you thereafter attempt to reach the New York number or the Baltimore number again?

A No. Harry called me. I called two times, the New York number and once the Baltimore number, which was out, and then Harry called me from Florida, and I told him what had happened, and he told me don't worry about it, that he would take care of it when he got home.

2 Q You said the Baltimore number was out. What do
3 you mean by that?

4 A The operator said it was -- the number wasn't
5 working.

6 Q You said that you heard from Harry at this time.
7 Could you tell us how you heard from Harry and what was said
8 by you and by him?

9 A Harry called me from Florida where he was on
10 vacation and he asked me how everything was going, and
11 I told him that his friend still owed me money and I couldn't
12 seem to get in touch with him, and he said, "Don't worry
13 about it," he would take care of it when he got home.

14 Q What is your recollection about when he came
15 home?

16 A It was around the 4th of July.

17 Q And what did he do, if anything, when he came
18 home?

19 A He -- what do you mean, what did he do?

20 Q When he returned, did there come a time when he
21 tried the numbers?

22 A Oh, he --

23 MR. SIEGEL: Objection, your Honor.

24 THE COURT: I will permit it.

25 Go ahead, answer the question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

tp

Provitera-direct

3022

A Harry told me that he was having difficulty getting in touch with Allen.

Q Mr. Provitera, did you have any transactions in narcotics from this period, that is, around the 4th of July, to the rest of the summer?

A No.

Q Did Harry tell you why there were no heroin transactions?

A He said in the summertime it always seemed to dry up.

Q Directing your attention, Mr. Provitera, to early fall, did you have occasion at that time to have any narcotics transactions?

A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

etal

Provitera-direct

3023-

Q And when was that?

A It was around the end of September or October,
in the fall?

Q And what were the circumstances --

MR. KING: Excuse me. Are we talking
about '72 or what?

THE COURT: I believe we are.

Are we, Mr. Provitera?

THE WITNESS: Yes, 1972.

Q And did Harry get in touch with you at this
time?

A Yes.

Q What, if anything, did he say?

A Well, he told me that things were picking up
and that we would be moving again.

Q Did he mention with whom you would be moving?

A With Allen.

Q Did he at that time give you any directions?

A Yes. He made arrangements for delivery and
he told me that this time I would pick up the package from
his brother John.

Q Where was that?

A John lived in Oakland County.

Q Do you remember the name of the town?

1

2

A Orangeburg.

3

Q And where is Orangeburg, roughly speaking.

4

A It was -- it's in Rockland County. It's

5

right over the New Jersey-New York borderline.

6

Q And did you go to Orangeburg?

7

A Yes.

8

Q And what occurred?

9

MR. POLIAK: Can we get a time when he went

10

to Orangeburg, your Honor?

11

MR. ENGEL: I believe the witness has

12

testified --

13

THE COURT: We have already late September,

14

early October of 1972.

15

MR. POLLAK: That was the call. Did he

16

go to Orangeburg immediately or a week later?

17

THE COURT: All right. Did you go to

18

Orangeburg immediately around that period?

19

THE WITNESS: It was at this time, after Harry

20

told me the arrangements were made, a couple of days

21

later, he would tell me a couple of days, you know, before

22

or a day before.

23

Q What occurred when you went to Orangeburg?

24

A I went to Orangeburg by John's apartment and

25

I waited in the parking lot for John to pull up. Then

1 he pulled up I got out of my car and went over to him
2 and he went into his trunk of his car and he gave me the
3 package, I brought it back to my car and I put it in my
4 toolbox. I drove back to Howard Johnson's, where I
5 met Harry and Salley and Allen.
6

7 MR. POLLAK: Can we get a date for that meet-
8 ing, your Honor?

9 THE COURT: Is this the same night that you
10 picked up the narcotics?

11 THE WITNESS: Yes.

12 BY MR. ENGEL:

13 Q You mentioned that you met Harry and Allen and
14 Salley.

15 A Yes.

16 Q At the Howard Johnson's?

17 A Yes.

18 Q And what happened then?

19 A Well, Harry asked me if I had the package
20 okay. I said, "Yes," and he told me to give it to him,
21 which I did, and he introduced me to Salley.

22 Q Who introduced you to Salley?

23 A Allen.

24 Q And did he say anything else?

25 A Yes. He said that Salley was his man and

that I would be delivering to him.

Q Mr. Provitera, I ask you to stand up and take a look around the courtroom and tell us if you see Henry Salley in the courtroom today.

A Yes, in the blue suit.

Q And can you tell us where he is sitting?

A Right there in the blue suit (indicating).

MR. ENGEL: May the record reflect the witness has identified the defendant Henry Salley.

Q Did you ever know Mr. Salley wear glasses?

A Yes.

Q At the time when you met him did he wear glasses?

A Yes, he did.

Q After this meeting where you testified you met Henry Salley what happened after you met Salley on that night?

A On that night?

Allen said that I would be delivering to Salley from then on and we just, you know, introduced and then I left.

Q Did you have occasion to see the defendant Henry Salley again?

A Yes, I did.

Q When was that?

1 A Approximately a week or two weeks later.

2 Q This would be in what month, roughly speak-
3 ing?

4 A This would either be late October or early
5 November.

6 Q And what were the circumstances of that meet-
7 ing?

8 A Well, Harry got in touch with me and he told
9 me that there was to be another delivery made, that I would
10 meet John in the same way and get the package and bring
11 it to 46, Route 46, to Howard Johnson's, where I would
12 meet Salley and give it to him and tell him to tell Allen
13 that Harry would be in touch with him.

14 Q And what did you do thereafter, after you
15 heard from Harry?

16 A I did that. I went, I met John, I got the
17 package, I took it to Route 46, where I met Salley, and
18 I gave him the package and told him that Harry would be
19 in touch with Allen.

20 Q Some time thereafter did you have occasion to
21 return once again to Howard Johnson's?

22 A Yes.

23 Q Is this the same Howard Johnson's you have
24 been speaking of?

1
2 A Yes.

3 Q How did that trip come about?

4 A It was late one afternoon, approximately a week
5 or so later, when Harry stopped at my house and asked me
6 to take a ride with him to Howard Johnson's. He said
7 he had to meet Allen and get the money. He asked me
8 if I would go with him, which I did.

9 We drove out to the Howard Johnson's and we
10 parked, we saw Salley was standing there in the parking
11 lot. We went up to him and Harry was talking, you
12 know, "Is Allen here yet?" and he said, "No, he didn't
13 arrive yet"; he was expecting him in by plane from
14 Baltimore and he would be there shortly.

15 So the three of us went into the Howard John-
16 son's, we got something to eat, we hung around a half
17 hour or so, and Harry says, "Well, come on, we better go."
18 He says, "I'll tell Allen I'll be in touch with him."

19 MR. POLLAK: May we have a date for that
20 conversation, your Honor, this one?

21 THE WITNESS: There is no date. I told you
22 it was in October or November.

23 MR. POLLAK: Could the witness be instructed
24 to give as clear a date as he can.

25 THE COURT: I think he has.

Q Mr. Provitera, after you waited for Allen, you testified that Harry told Salley that you were going to leave. Did you thereafter leave?

A Yes. We started pulling out. As we were coming out of the parking lot and starting to head down the road, Harry saw a taxi and he said, "I think that's Allen."

So we turned around and went back.

Q And what time of the day or night was this, if you can recall?

A This was around 6, 6:30 at night, it was just getting dark out.

Q After Harry said that he had seen Allen or thought he had seen Allen, or thought he had, in a taxi, can you tell us what happened?

A We turned around and we drove back to the Howard Johnson's, where we met Allen. He told us to come with him. We went into Salley's room, bedroom, in the hotel there. Allen gave Harry a package of money and he said that it wasn't all there, that he would need more time to get the rest. He said -- he said the dope was no good, it was of a very bad quality and he was having trouble getting rid of it. If Harry would hear with him, it would take a few days, a week or so,

ONLY COPY AVAILABLE

to get the rest of the money.

Q Did Harry say anything on this occasion?

A Harry said okay, that he would hear with him.

Q Did Allen say anything further in this conversation?

A Not to my recollection.

Q After this meeting did you have a conversation with Harry with respect to Allen?

A Yes. After this, like, Harry told me he was havint trouble getting the money from Allen and he couldn't seem to get in touch with him and he told me he was, you know, trying every day, he was calling and all and he couldn't get in touch with him. He said that he would have to call Tennessee and see if Tennessee could do anything for him.

Q And when was this, if you recall, this conversation with Harry?

A This was around through November, December, somewhere in there.

Q Directing your attention to January of 1973, did you have occasion at some point to go to Pelham Bay in the Bronx?

A Yes.

Q Will you tell us how that trip occurred, how that came about?

A Well, in early January Harry said that everything was going to start moving again and he had been in touch with Tennessee and Everything was going to start going again. He told me to go to Pelham Parkway, by Patty's apartment, and he told me to wait there and John would be along in his car and he would have another package for me, and that I was to bring it back to Route 46, but this time on the other side of the highway where there is a diner.

Q Do you remember the name of the diner?

A The Landmark.

Q And did you then go to Pelham Parkway?

A Yes, I did.

Q And where did you go on Pelham Parkway, if you can recall?

A It wasn't on exactly Pelham Parkway. Like the street is like a dead-end and it runs in and then it is, like, Pelham Parkway alongside of it. There is a bar there, the -- oh, I can't recall the name of the bar right now.

Q At any rate, you went there, and did you wait for John there?

1 A Yes, I did.

2 Q And did anything occur while you were waiting?

3 A Well, I waited there. I was to meet him,
4 I think, at 8 o'clock. I got there about 10 to 8 and
5 I was waiting a pretty long time. John was late. I
6 was sitting in my car and I saw Patty come out of the
7 house. He was walking his dog. So I left my car
8 and I went over to talk to Patty. I asked him if he
9 seen John, he wasn't there yet, and we both stood around
10 by his dog waiting for John to arrive.

11 Q What sort of a dog was it, do you remember?

12 A Great Dane.

13 Q During this conversation with Patty did anything
14 catch your eye or did you have occasion to observe
15 anything?
16

17 A We were standing there, he was holding the dog,
18 and a car pulled up on the shoulder of the road of
19 Pelham Parkway and somebody got out and opened the
20 hood of the car, and Patty said to me, "Let's go over
21 and give the guy a push."

22 He started walking over toward the car and
23 John pulled up and I said, "You know, I'm running late
24 all night, the hell with that guy," and I went over to
25 John.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q And what did you say, if anything, to John?
A Oh, Patty told me, "Well, tell John that I'm
over here by the car."

I went over to John and I got the package from
John, I told him that Patty was waiting over there and
I left.

Q And then did you go over to John after that?

A I put the package in my car, in my toolbox,
and then I went out to the Landmark to meet Harry.

Q And what, if anything, occurred when you met
Harry?

A I pulled into the parking lot by the diner.
Harry was there waiting. I got out of my car and I went
and sat with him and a car pulled up, a guy got out,
came over, and Harry introduced me to him as Al and
he told me to get the package. I went to my car, I
got the package, I gave it to Al and Harry told me that
this was Al and this is who I would be delivering to from
now on.

Q Have you come to know Al by any other name?

A Yes.

Q What was that?

A Al Logan.

Q And who is he?

1 A He's an agent.

2 Q Of what?

3 A Pardon?

4 Q Of what?

5 A Narcotics.

6 Q You testified that you were in a room at the
7 Howard Johnson's some time in October or November when
8 Allen complained of the quality of the narcotics. Do
9 you remember that?

10 A Yes.

11 Q Can you tell me whether the defendant Henry Salter
12 was present in the room?

13 A Yes, he was.

14 Q For the entire time of this conversation?

15 A Yes. It was the four of us in the room.

16 Q And during the time that the money was paid?

17 A Yes.

18 Q After this meeting with Al did you have another
19 transaction with him?

20 A Yes.

21 Q How many?

22 A I went once to give him a message and two
23 other transactions.

24 Q And on the second transaction were you ar-

25 ONLY COPY AVAILABLE

1 qta

Provitara-direct

3035

2 recall?

3 A The third transaction.

4 Q The third transaction.

5 MR. ENGEL: Will your Honor bear with me for
6 a minute?

7 (Pause.)

8 Q Mr. Provitara, have you and I discussed the
9 substance of your testimony that you have given here today?

10 A Yes.

11 MR. ENGEL: I have no further questions,
12 your Honor.

13 THE COURT: All right. Do you want a
14 couple of moments before we start?

15 MR. KING: Whatever your Honor says.

16 THE COURT: Why not. It will give you a
17 chance to just jot down your thoughts. All right?

18 MR. KING: Thank you, your Honor.

19 THE COURT: All right.

20 Ladies and gentlemen, we will take an early
21 afternoon break.

22 (The jury left the courtroom.)

23 THE COURT: All right, Mr. Provitara, stop
24 I don't want you talking to any of the prosecu-
25 tors. Do you understand?

ONLY COPY AVAILABLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

qta

3035a

THE WITNESS: Yes, sir.

THE COURT: All right.

Let us take 10 minutes.

(Recess.)

ONLY COPY AVAILABLE

T3

(In open court; jury present.)

THE COURT: All right, Mr. King.

CROSS EXAMINATION

BY MR. KING:

Q Mr. Provitera, my name is King, Leonard King.
I represent John Gamba.

How old are you, sir?

A 34.

Q Would you kindly tell us what your educational
background is?

A High school education.

Q Are you a high school grad?

A Yes.

Q When were you arrested in this case, sir?

A Last February, February, '73.

Q Did you say January or February?

A I said February, '73.

Q February what, sir?

A I am not sure of the exact date.

Q Was it the early, middle or latter part?

A Early.

Q As soon as you were arrested, were you jailed?

A Yes.

Q Before you were arraigned, did you speak to any

government representatives?

A Before I was arraigned -- at the time I was arrested they asked me questions, my name and stuff like that. But other than that, no.

Q Can you remember, Mr. Provitera, the time of the day or night that you were arrested?

A It was around midnight.

Q Midnight?

A It was at 9 o'clock, but by the time I went to the county jail it was after midnight.

Q You were arrested about 9 and by the time you went to the jail you say it was about 12, is that what you said?

A Yes.

Q In those three hours were you interrogated by anybody?

A I was interrogated by a couple of agents.

Q When you say agents you mean agents of the United States Government?

A Yes.

Q At that time did they say to you in effect, "You tell us the truth and you got nothing to worry about"?

A No, sir. they didn't.

Q In those three hours substantially what did you

1 and the agents talk about?

2 A Most of the time I was left in the room by
3 myself.

4 Q For how long?

5 A Approximately two hours. I was fingerprinted
6 and therest of the other time they just asked questions,
7 my name, Social Security number, stuff like that.

8 Q Your pedigree?

9 A Yes.

10 Q They didn't ask you anything concerning the
11 events that led to your arrest?

12 A They told me that if I wanted to cooperate that
13 this would be the time to cooperate.

14 Q They told you that before midnight?

15 A Yes.

16 Q And what did you say?

17 A I said I wanted to see my attorney.

18 Q Were you and Harry arrested at the same time,
19 sir?

20 A Not at the same time. The same evening, though.

21 Q Did you know at the time that you were arrested
22 that Harry was also either arrested or was in the process
23 of being arrested?

24 A No, not immediately.

1 hp4 Provitera-cross

2 Q Did they tell you that they had Harry, words to
3 that effect?

4 A Yes.

5 Q Did they intimate to you that Harry was, in so
6 many words, making a clean breast of things?

7 A No, they didn't.

8 Q When you told them you wanted to see your lawyer
9 first what did they then say?

10 A That I would get my phone call in due time.

11 Q Are you acquainted with the phrase Miranda
12 warning, do you know what that means?

13 A That's about the rights.

14 Q Yes.

15 A When they tell you your rights.

16 Q Did they read that to you?

17 A Yes.

18 Q And you understood what they were saying?

19 A Yes.

20 Q And that's how you came to say, "I want to see
21 my lawyer first," is that right?

22 A Yes.

23 Q Were you arraigned the following morning?

24 A No, sir. I was arraigned -- it was on a weekend.
25 We were arraigned the following Monday.

1 Q What day of the week were you arrested, can
2
3 you remember?

4 A It was Friday night.

5 Q So that before you were arraigned Saturday and
6 Sunday elapsed, is that right?

7 A Yes, sir.

8 Q During that period did any of the
9 government representatives try to elicit any information
10 from you?

11 A No, sir.

12 Q You were arraigned on the following Monday
13 morning, is that right?

14 A Yes.

15 Q What were you charged with?

16 A Four charges. It was four harges.

17 Q Which were?

18 A Conspiracy, possession with intent, and I think
19 some of them might have been twice.

20 Q Did you understand at the time that each of
21 those charges were felonies?

22 A Yes, sir.

23 Q After your arraignment you were returned to jail,
24 is that right?

25 A Yes.

hp6

Provitera-cross

Q How long were you in jail?

A Two or three days.

Q At the time of your arrest that came to you as a surprise, did it not, you didn't know you were dealing with an undercover man, did you?

A No, sir, I didn't.

Q Would it be safe to assume that after your arrest you were rather frightened, scared?

A Yes, sir.

Q You made bail in that case, did you?

A Yes.

Q How much?

A The bail was 25,000.

Q While you were in jail did you have an opportunity to speak to your brother-in-law Harry?

A Yes.

Q At that time did either you or he discuss the advisability of cooperating with the government?

A No, sir.

Q That wasn't mentioned?

A No, sir.

Q You had both decided that you were going to plead not guilty, is that right?

A Yes, sir.

ONLY COPY AVAILABLE

1 hp7

Provitera-cross

2 Q Was Harry's brother Johnny arrested at the same
3 time?

4 A Yes.

5 Q Did you get an opportunity to speak to him?

6 A Yes.

7 Q Did you have a conversation with Johnny like I
8 asked you about Harry, the advisability of cooperating with
9 the government at that time?

10 A No, we didn't discuss the advisability. We just
11 said that we would plead not guilty.

12 Q I am sorry. I didn't get the last part.

13 A We decided that we would plead not guilty.

14 Q There came a time when the three of you were
15 released on bail, is that right?

16 A Yes.

17 Q After you were released did the three of you get
18 together to discuss the situation you were in?

19 A We hired an attorney, the three of us hired an
20 attorney.

21 Q The three of you hired the same attorney, is
22 that right?

23 A Yes.

24 Q I take it that when you saw this attorney the
25 three of you told him your story collectively and singly,

1 hpC Provitera-cross

2 is that right?

3 A Yes.

4 Q After you told him your story -- don't tell me what
5 he said to you -- as a result of your having told your lawyer
6 your story, did you then decide to cooperate?

7 A No, not right at that time.

8 Q When did you see the lawyer, to the best of your
9 recollection --

10 A Right after -- .

11 Q You were released?

12 A Right after we were released.

13 Q Then you saw him more than once, did you?

14 A Yes.

15 Q About how many times did you see him?

16 A Three or four times.

17 Q When was the last time that you saw him?

18 A The last time I saw him?

19 Q Yes, you or your brother-in-law and his brother.

20 A I saw him yesterday in the building.

21 Q When was the last time you saw him before you
22 started to cooperate?

23 A I don't recall the date, but it was like immediate-
24 ly before.

25 Q Will you please tell us when you decided to

1 hp9

Provitera-Cross

2 cooperate?

3 A Around June, I think, around June last year.

4 Q June of 1973?

5 A Yes.

6 Q It was as a result of your speaking to your
7 lawyer in June that you decided to cooperate, is that
8 correct?

9 A Yes.

2 10 Q Then when you decided to cooperate what did you do?
11 Tell us, please.

12 A The lawyer made arrangements for us to meet with
13 two of the agents and we met with two of the agents.

14 Q You are again referring to government agents?

15 A Yes.

16 Q When you met with the agents was your lawyer
17 present during the meeting?

18 A On the first meeting, yes.

19 Q And at that time, with your lawyer present,
20 was that the beginning of your relating to the government
21 what you considered to be cooperation with them?

22 A Yes, sir.

23 Q Before you started your cooperation with the
24 government did either your lawyer, you, Harry or Johnny
25 in effect ask the government agents what you could expect

1 hp10 Provitera-cross

2 if you cooperated with them?

3 A In effect, yes.

4 Q What did they tell you?

5 A They told us that all our cooperation would be
6 told to the sentencing judge, the extent of our cooperation.

7 Q The extent of your cooperation?

8 A Yes.

9 Q Do you know the names of the agents who inter-
10 viewed you the very first time that your lawyer was present?

11 A Agent Nolan and I don't know the other agent's
12 name.

13 Q Was the other agent white or colored?

14 A White.

15 Q In your subsequent interview with the agents
16 were they Nolan and this other person that you have des-
17 cribed?

18 A I don't understand.

19 Q You had your first interview with Agent Nolan
20 - you said and another agent, right?

21 A Yes.

22 Q That was the time your lawyer was present?

23 A Yes.

24 Q Subsequent, after that first interview with
25 these agents, did you again interview the same two men?

1 111.

Provitera-cross

2 A Nolan, not the other one.

3 Q Nolan and still another one?

4 A A different agent, yes.

5 Q Do you know his name?

6 A Agent Moore.

7 Q How many interviews with government agents would
8 you say that you had after you started your cooperation?

9 A Approximately six or seven.

10 Q Over what period of time?

11	A	From July or June.
----	---	--------------------

12 Q Of 1973?

13 A Yes.

14 Q To?

15 A Well, through the summer like, and then I was
16 interviewed by the DA's. They were there on a couple of
17 occasions.

18 Q When you say the DA you mean the United States
19 Attorney?

20 - A Yes.

21

22

23

25

Q When did the United States attorney come into the picture?

A I had a meeting with Mr. Phillips before the grand jury hearing. I don't know what date that was.

Q Do you know what month it was?

A I think it was July or August.

Q And how many interviews did you have with Mr. Phillips?

A I had that one and one more.

Q Totaling the interviews with the agents and with Mr. Phillips, what would be your estimate of the number of hours you have spent with both of them?

A The number of hours in actual interview or the number of hours waiting around?

Q All in all.

A Each time was, like, two or three hours, four hours possibly.

Q About 18 or 20 hours, Mr. Provitera?

A Roughly.

Q In addition to being interviewed by Mr. Phillips, were you also interviewed by Mr. Engel, who examined you today?

A Yes, I was.

Q And how much time did you spend with him?

eta2

Provitera-cross

1 A I think I included that like in the total.
2
3 I spent three or four occasions with --

4 Q How much on each occasion?

5 A Two three hours.

6 Q It would be about eight hours with him, six
7 to eight hours?

8 A Ten.

9 Q When you went over the questions with --

10 MR. KING: Withdrawn.

11 Q When you were interviewed by both Mr. Phillips
12 and Mr. Enzel did they go over the questions and the
13 answers with you as you gave them here today?

14 A They asked me to tell the story and, you know,
15 I told them the story. It came about today pretty much
16 the same way.

17 Q Pretty much as you gave it today?

18 A Yes.

19 Q Mr. Provitera, I show you Government's Exhibit
20 - 3576. Please look at it and tell me whether that
21 contains a debriefing of you by some government repre-
22 sentative who is identified in that debriefing as "Voice."

23 A Yes.

24 Q Can you tell me approximately when that de-
25 briefing was held, to the best of your recollection?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cta3

Proyitera-cross

3049

A June or July.

Q OF '73?

A '73, yes.

Q And who is the person, as you recall it, who is mentioned as "Voice" in here?

A Agent Nolan.

Q And where did this debriefing take place?

A In the agent's office building.

Q Which is what, 57th Street?

A I think so.

THE COURT: Mr. King, you referred to that by a number. What was the number that you referred to it as?

MR. KING: I said, "Are you referring to 39th Street?"

THE COURT: No, no, the number of the exhibit.

MR. KING: I am sorry. It is Government's Exhibit 3576.

MR. ENGEL: Your Honor, I don't think that has been officially marked.

THE COURT: You are going to have a hard time because you already have something marked 3576.

MR. KING: It is the number I have on mine, sir.

ONLY COPY AVAILABLE

gtad

Provitera-cross

3050

MR. ENGEL: Your Honor, may the transcription to which Mr. King has been referring be marked as Government's Exhibit 3577.

THE COURT: All right. Were there other items also marked?

MR. ENGEL: Yes. And may Mr. Provitera's grand jury testimony be marked as 3578.

MR. KING: Is my number correct, Judge?

THE COURT: No, your number is not correct. I already had a 3576 and it didn't look like yours.

(Government's Exhibits 3577 and 3578 were marked for identification.)

Q That Government's Exhibit 3577, Mr. Provitera, did that debriefing take place on one occasion or was it over several occasions, do you know?

A That was one occasion.

Q How long did that take?

A A couple of hours.

Q And then after that debriefing was transcribed did you see a copy of it?

A Yes.

Q And how recently did you see that?

A Either last week or early this week. I'm not sure.

1

cta

Provitera-cross

3051

2

Q Was that transcribed copy given to you to

3

take home and studied?

4

A No, sir.

5

Q Where did you see it?

6

A In Mr. Engel's office.

7

Q And you went over it a couple of times, I

8

take it?

9

A No. He handed it to me and told me to look

10

through it.

11

Q And you did?

12

A Yes.

13

Q Just once?

14

A Yes.

15

Q Do you recollect pretty well what is in that

16

exhibit, sir, having read it --

17

A I didn't read it word for word; I just thumbed

18

through it.

19

Q No matter what manner you used to read it, do

20

- you recognize it pretty well, its contents?

21

A I don't think I could honestly say that, sir.

22

Q Do you recall Mr. Engel's examination this morn-

23

You recall that, don't you?

24

A Yes, sir.

25

Q Do you recall what he said to you was the

1 deal that Harry wanted you to go in with him for, what
2 kind of business Harry approached you on to go in with
3 him?
4

5 A Oh, yes.

6 Q What was it?

7 A Narcotics.

8 Q When Mr. Nolan was questioning you, which is
9 the basis of Government's Exhibit 3577, did he ask you
10 these questions and did you give him these answers:

11 I am reading from page 2, the page immediately
12 beneath the cover page and has no number

13 The "Voice" is now Mr. Nolan?

14 A Yes.

15 Q He said:

16 "We're going to start right off, Jimmy, with
17 just what you know, you know.

18 "When you first came into the picture, you
19 know, who approached you, say, about 'You want to make
20 money?' or whatever, you know?"

21 And you answered:

22 "Harry was in it, like, for a year or so."

23 And Nolan said:

24 "Did you more or less know?"

25 And you answered:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta Provitera-cross 3053

"I didn't know. I didn't know it had anything to do with junk."

Were those questions asked of you and did you give those answers?

A Yes, I did.

Q And further on on that page did you say --

MR. ENGEL: Your Honor, I object to this line of questioning. The witness' recollection has been exhausted.

MR. KING: Withdrawn.

Q Further on on that page were you asked: "You knew he was into something?"

And you answered: "Yeah, we thought" -- and there is an interruption, "he told like, the family" --

MR. ENGEL: Your Honor, I object. This is the same thing as before.

THE COURT: I know.

Q Was that question asked of you and did you give that answer?

MR. LOPEZ: Excuse me, your Honor, I didn't hear the question.

Can I hear that question again, Mr. King?

Repeat the question again.

1 gta

Provitera-cross

3054

2 THE COURT: Mr. King, hold on.

3 MR. KING: Apparently somebody didn't hear
4 it, Judge. With your permission, I will repeat it.

5 THE COURT: All right, go ahead.

6 BY MR. KING:

7 Q Mr. Nolan asked you that page, the same page:
8 "You knew he was into something?"

9 And you answered:

10 "Yeah, we thought" -- interruption -- "he told,
11 like, the family that he was loansharking and he used to
12 have to go up -- go pick up money and shit like that."

13 Was that asked and did you give that answer?

14 MR. ENGEL: Your Honor, I object. Counsel
15 has omitted a sentence there.

16 THE COURT: Not one sentence, a paragraph
17 or two.

18 MR. KING: I am sorry, Judge.

19 THE COURT: There was an objection that you
20 omitted a sentence, but it goes on for a while more than
21 just a sentence.

22 MR. KING: Yes. Shall I read the follow-
23 ing sentence?

24 THE COURT: Let me read it.

25 The question was asked of you:

ONLY COPY AVAILABLE

"You knew he was into something?"

And you answered:

"Yeah, we thought -- he told, like, the family that he was loansharking. He was dealing with loan-sharking. And he used to have to go pick up money and shit like that.

"And I guess he was doing it a while. And I don't know how the subject come up, but, anyway, I got into it. And it turned out that was not loansharking, and everything. And I got into it anyway.

"So he took me over one day and introduced me to Patty."

Do you remember making or someone asking you that question and you giving that answer?

THE WITNESS: Yes, sir.

BY MR. KING:

Q That refreshes your recollection to the extent, Mr. Provitera, that when you told Mr. Engel you knew immediately it was narcotics, that was incorrect, is that right?

A No, sir. In that statement I was referring to the year that Harry was doing it before I got into it. The year previous to that, before he approached me, I thought he was loansharking.

Q But you say when he approached you he immediately approached you for narcotics?

A Yes.

Q All right.

At the time that Harry approached you with this proposal did you have a legitimate job?

A Yes, sir.

Q What were you doing?

A Window calking.

Q Window --

A Calking.

Q Calking? And how much were you earning at that, sir?

A Two and a quarter a week.

Q How much rent were you paying at the time?

A 140.

Q How much of a family did you have at the time?

A Wife and a son.

Q When you first went into this business with Harry, as I understand it, you were to pick up the narcotics and deliver them, right?

A Yes.

Q Weren't you making these pickups from some garage?

1 eta

Provitera-cross

3057

2 Q From a garage?

3 Q Yes.

4 A No.

5 Q Where were you making them from?

6 A As I stated, in the beginning Harry was
7 putting them in my car.

8 Q I see.

9 Mr. Provitera, when did you first meet Mr.
10 John Carba?

11 A The first time was at his apartment.

12 Q Well, that is telling me where. I asked you
13 when.

14 A I could say in late April, May.

15 Q Of?

16 A '72.

17 Q April, May of '72, is that right? Is that
18 that you said?

19 A Yes, yes.

20 Q And you hadn't known him before, had you?

21 A No.

22 Q And who introduced you to him?

23 A Harry.

24 Q And you say Harry introduced you to Mr. Carba
25 at Mr. Carba's house?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Provitera-cross

3058

A Yes.

Q Do you know Mr. Gamba's address?

A It was on Rosedale Avenue. I don't know the house number.

Q Was it an apartment house?

A An upstairs and downstairs.

Q Two-family house.

Q Garden-type house. Yes, two-family.

MR. SIEGEL: Your Honor, may I interrupt this question and ask for a side bar at this time?

THE COURT: Pardon me?

MR. SIEGEL: May I have a side-bar conference at this time?

THE COURT: Yes, all right.

(At the side bar.)

THE COURT: What is the matter?

MR. SIEGEL: Your Honor, I just wanted to bring the court's attention, I observed Juror No. 11 sound asleep and I --

MR. KING: I am not hearing you.

MR. SIEGEL: I say I observed Juror No. 11 sound asleep. I called a side bar in hopes of waking him up.

THE COURT: He is not sound asleep now.

1 gta

Provitera-cross

305

2 MR. SIEGEL: That is why I called it.

3 THE COURT: All right.

4 (In open court.)

5 BY MR. KING:

6 Q When you were, as you say, introduced to Mr.
7 Gamba by Harry, that was it, he introduced you to Mr.
8 Gamba and then you left, both of you, is that right?

9 A No, we didn't leave immediately.

10 Q How long did you stay there?

11 A Pat Dilagio was there too. It was the
12 four of us.

13 Q The three of you were there?

14 A Four all told, yes.

15 Q When you say four all told, you are including
16 Mr. Gamba?

17 A Yes.

18 Q Was anybody from Mr. Gamba's family around at
19 the time?

20 A I don't recall.

21 Q Do you recall in what room you met of that
22 house?

23 A The dining room.

24 Q And the dining room is located where with re-
25 lation to the first room that you enter as you come into

ONLY COPY AVAILABLE

1 eta

Provitera-cross

3060

2 the house?

3 A You come into, like, a hallway. You go
4 up the stairs, open a door, you come into another hallway.
5 The kitchen is on the right and the dining area is
6 off the kitchen.

7 Q And who did the talking, if any, with Mr. Garba?
8 Was it Larry, you or Patty?

9 A The four of us talked. We sat around.
10 We were sitting around the table.

11 Q You mean all of you talked?

12 A Yes.
13
14
15
16
17
18
19
20
21
22
23
24
25

1

2

Q What if anything did you say?

3

A I don't recall.

4

Q Do you recall that you were talking?

5

A I recall the four of us sitting around talking at the table.

7

Q I am asking you if you talked.

8

A I know I talked at least once when I said hello, you know.

9

10

Q That was a lengthy conversation, wasn't it?

11

Did you overhear Harry make any offers of money to Mr. Gamba?

12

13

A No.

14

Q That was during the time you were all sitting around talking, right?

15

16

A Right.

17

Q Mr. Privitera, how many times is it your recollection that you were at Mr. Gamba's house?

18

19

A Approximately four.

20

Q Could it have been six or eight times?

21

A No.

22

Q You don't think it was more than four? You are sure of that?

23

24

A Four or five.

25

Q I am referring to page 21 of Government's

hp2

Provitera-cross

Exhibit 3577. On page 21 do you recall Mr. Nolan saying to you:

"During all this time when you were dealing with those people up there on University Avenue did you ever go to someone -- did you ever pick up a package from someone other than Harry?"

And you answered:

"I don't think so."

Nolan said, asked:

"Were you ever told to go to Patty's or Sinatra's?"

And you answered:

"I went to Sinatra's a couple of times and I think that was near Rosedale Avenue, near Rosedale Avenue."

Were those questions asked of you and did you give those answers?

A I don't recall that, no.

Q Let me show it to you and see if that refreshes your recollection.

A I believe it's there. I just don't recall.

Q If it's there you said it, is that what you are saying?

A Yes.

MR. ENGEL: Your Honor, I object to Mr. King's remark, repeating "near Rosedale Avenue" with emphasis.

hp3

Provitera-cross

THE COURT: I will permit it.

Q Incidentally, Mr. Provitera, did you receive any remuneration from Harry for the work you were doing for him picking up and delivering?

A Yes, I did.

Q How much did you get?

A \$200 for each trip.

Q \$200 for a trip?

A Yes.

Q Does that mean for a trip of picking up and a trip of delivering?

A Yes, that would be one trip.

Q Can you estimate what total you received from Harry?

A Yes. About 2000.

Q Did he pay you for each and every errand that you did?

A No, he didn't.

Q How much did he, if you will forgive my using a phrase, how much did he short-change you by?

A The last three trips to the agent.

Q \$600?

A Yes.

Q Has he returned it to you since?

hp4

Provitera-cross

A No.

Q Coming back to your four visits to Mr. Gamba's house, as you have stated it -- I am referring again to Government's Exhibit 3577, more specifically, to page 34 -- I will go back to page 33, at the bottom, where Mr. Nolan asked you:

"Say like you're passing Howard Johnson's, you're going toward the City."

Continuing on page 34, you said:

"Yeah. You turn off. The first turn-off past there.

"Nolan: Is that where it slopes down?

"You: Yeah, yeah, yeah.

"Nolan: Like right on your left?

"You: It's like under the El. It's like under the overpass there.

"Nolan: Is the thing right on your left as you're going down this thing?

"You: Yeah, yeah.

"Nolan: Okay.

"You: I went there with Harry. I had to meet Harry there.

"Nolan: Yeah.

"You: Right? We had a meeting I think up at --

1 hp5

Provitera-cross

2 maybe I didn't -- maybe I got it from this other kid now,
3 Herbie.

4 "But -- I'm sure that I only went to Sinatra's
5 to pick up once or twice. And the same thing with this
6 other kid. You know, once or twice."

7 Does what I have just read change your mind
8 as to the number of times you went to Sinatra's house?

9 A No, sir, it doesn't.

10 Q You still say that you went there four times?

11 A Yes, sir.

12 Q But when you were being debriefed you said the
13 most you went there was twice?

14 A Yes.

15 Q Did you have any reason at the time that you told
16 Mr. Nolan that you went there twice when you knew you went
17 there four times?

18 A At the time that I told Mr. Nolan I went there
19 twice I recollected that I went there twice. In remembering
20 it better I remember it four times.

21 Q When were you debriefed by Mr. Nolan?

22 A In June or July.

23 Q Of last year?

24 A Yes.

25 Q You are telling this Court and jury that seven

1 bp6 Provitera-cross

2 months later after the event you can now recollect the
3 event better than you did then?

4 A Yes, that's right.

5 Q When you were being debriefed by Mr. Nolan do
6 you recall saying to him that you thought that Mr. Gamba
7 lived on Ruinsdale Avenue?

8 A No, I don't recall that.

9 Q Do you recall on direct examination this morning
10 by Mr. Engel you stated that you were in Mr. Gamba's house
11 in May of 1972?

12 A I remember stating that I was in Mr. Gamba's
13 house. I don't remember the May.

14 Q In May of '72?

15 A I don't remember if I said that. If you say I
16 did, I did.

17 Q You don't remember?

18 A I don't remember saying that I was in Mr. Gamba's
19 house in May of '72.

20 Q When was the last time you were there?

21 A I remember saying that I was there in late April,
22 early May, something like that.

23 Q If I told you that your brother-in-law Harry
24 testified that he gave this goods to Mr. Gamba between
25 Thanksgiving and Christmas of '71 and that he also testified

hp7

Provitera-cross

that it was kept there for about four or five months, would that change your testimony?

MR. ENGEL: Objection.

THE COURT: No, I will permit it.

Go ahead. Would that change your testimony.

A No, it wouldn't.

Q You think your recollection is better than Harry's, is that right?

MR. ENGEL: That is objectionable.

THE COURT: Sustained.

Q Do you of your own knowledge, not what anybody told you, but of your own knowledge, know whether Mr. Gamba ever received any money from Harry?

A From my own knowledge, no.

Q At the time that you say you were introduced to Mr. Gamba was his wife, mother-in-law or children around? That's the first occasion.

A I don't recall.

Q Do you recall anyone else being in there at that time?

A Yes. Patty, myself.

Q No, no. Besides you four, was there anyone other than you four in the house?

A I don't recall. I don't know.

2 Q When you say you don't recall do you mean that
3 you didn't see them or you don't remember?

4 A I don't remember.

5 Q Am I correct, did I understand you to say this
6 morning in answer to one of Mr. Engel's questions that
7 narcotics were being mixed at Sinatra's house?

8 A Yes.

9 Q When was that?

10 A On the second time that I was there.

11 Q Which was when?

12 A Which I think I stated was a few days after the
13 first time.

14 Q When was the first time?

15 A As I stated before, it was April or May.

16 Q And then a few days later you say you saw the
17 stuff being mixed at Mr. Gambas house?

18 A Yes.

19 Q What part of the house?

20 A The living room.

21 Q Who was there at the time?

22 A Harry, myself and Sinatra.

23 Q And who performed this operation?

A Harry. The operation of mixing?

25 Q Was anybody of Mr. Gamba's family present?

ONLY COPY AVAILABLE

1 np9

Provitera-cross

2 A I don't know. I wouldn't think so.

3 Q If they were you would know it, wouldn't you?

4 A Most likely, yes.

5 Q Before you and Harry and Pat decided to cooperate
6 with the government did the three of you have a little
7 meeting and decide what you were going to tell the govern-
8 ment?

9 MR. ENGEL: I object, your Honor. I think maybe
10 he misstated it.

11 THE COURT: You threw in Pat there. I don't think
12 you meant Pat. It's Harry and John and this witness.

13 MR. KING: I stand corrected. Thank you,
14 Judge.

15 THE COURT: All right.

16 Q Harry, John and you, any time before you went to
17 be debriefed by the government, did you get together and
18 decide on a story?

19 A No.

20 Q You must have said something to each other as
21 to what you were going to tell the government, isn't that
22 so?

23 A No. We decided to tell -- when we decided to
24 tell the government agents they were sitting there, two of
25 them, and the three of us were sitting there, and they



1 hp10

Provitera-cross

2 said, "Are you going to cooperate," and we said, "Yes,"
3 and they said, "Okay, let's go," and we started telling
4 them the story.

5 Q You mean that before you went in there to talk
6 to these agents the three of you didn't talk to each other
7 and say, in effect, "What shall we say to them, tell them"?

8 A No, we never said that, "What should we say to
9 them."

10 Q What if anything did you say to each other?

11 A At the lawyer's office we decided that we were
12 going to cooperate, and that's what was decided, that it
13 would be best to cooperate, and then we went and cooperated.

14 Q If you decided that you were going to cooperate
15 I take it that you are implying that you were going to tell
16 the truth, right?

17 A Right.

18 Q Will you please tell us why you needed your lawyer
19 there to help you tell the truth?

20 A I didn't need the lawyer to help me tell the
21 truth. I needed the lawyer to tell me what was my best
22 course of action to take, and he said my best course would
23 be to cooperate.

24 Q He told you that in his office, right?

25 A Yes.

1 hp11

Provitera-cross

2 Q Why did you need him to accompany you to the
3 agents?

4 A He said -- he didn't accompany us to the agents.
5 He didn't accompany us to the agents.

6 Q I may be mistaken, sir, but didn't you tell me
7 that at your first meeting with the agents your lawyer was
8 present?

9 A It wasn't the same lawyer. It was a different
10 lawyer.

11 Q Why did you have a different lawyer when all
12 you decided to do was to tell the whole truth to the agents?

13 A Because that's what we were paying the lawyer
14 for.

15 Q I am sorry?

16 A That's what we were paying the lawyer for.

17 Q That's what you were paying the lawyer for?

18 A Yes.

19 Q Is that what you said?

20 A Yes.

21 Q Did that payment include further debriefing of
22 you by the agents?

23 A No.

24 Q Just for the first time?

25 A Yes.

hp12

Provitera-cross

Q So that he could tell you what to say?

A He wasn't even there for -- it wasn't a debriefing the first time he was there. The first time he was there it was like he introduced us to the agents and said that, you know, "They are willing to cooperate," and the agents explained, "All right, decide what you are going to do. If you are going to cooperate, cooperate and get in touch," and we said, "Yes, we decided we'll cooperate," and they set up a meeting.

Q And then your lawyer left, is that what you are saying?

A We all left. Then the next time we were alone with the agents.

Q The three of you had no conversation with this other lawyer, as you term him, as to what would be the best approach with these agents?

A I don't understand what you mean, the best approach.

Q I am sorry. This other lawyer that you mentioned, you didn't discuss with him what the three of you should say to the agents?

A No, not what we should say, no.

Q When you were cooperating with the agents, did there come a time at any of the times, the several times

1 hpl3 Provitera-cross

2 that you talked to them or to Mr. Phillips or to Mr. Engel,
3 when it was told to you in effect that the more people you
4 implicate the better chance you stand when it comes to
5 sentencing?

6 A No, sir, never.

7 Q Nothing like that at all?

8 A No, sir.

9 Q If they didn't say it that's what you under-
10 stood, right?

11 A No, sir.

12 Q On direct this morning you mentioned that you
13 were picking up stuff from a Frankie. Do you recall saying
14 that?

15 A Yes.

16 Q That Frankie was not Mr. Gamba, was it?

17 A No.

18 Q And it wasn't Mr. Pugliese, was it?

19 A No.

20 Q Since being released from jail and out on bail,
21 as you say, have you been working legitimately?

22 A Yes.

23 Q Where?

24 A I am in construction. It's all over.

25 Q Are you a member of any construction union?

ONLY COPY AVAILABLE

1 hp14

Provitera-cross

2 A Yes.

3 Q What union?

4 A Bricklayers.

5 Q Bricklayers union and you do window caulking?

6 A Yes.

7 Q Is that permitted?

8 A Yes. That's what it's under.

9 Q How much have you been averaging in your work,
10 how much money or remuneration have you been averaging a week
11 or a month?

12 A I made \$13,000 last year.

13 Q I think you told me before that you got from
14 Harry during your operations for him some \$2000, is that
15 right?

16 A Yes.

17 Q Did you include that in your income tax for '72?

18 A No.

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gtal

Provitiera-cross

3075

Q Are you receiving any money for testifving?

A I haven't received any money, no. I got --
the last time I was here for the grand jury I got \$20.

Q Did you get any money before that?

A Well --

Q Let me finish that question. I am sorry to
interrupt you.

When I say did you get any money, I'm always
referring to the United States Government.

A Yes, I understand.

In witness fees so far, I think I got \$60.

Q All told?

A Yes.

Q How much are you getting for this trip?

A I imagine the \$20 a day witness fee.

Q \$20 a day?

A Yes.

Q Did you say to the United States attorney, "I
make more than \$20 a day and I ought to get more money,
I'm losing pay"?

A No, I didn't say that.

Q These packages and bags that you refer to as
having picked up, did you ever look in any of them?

A Yes..

1 gta2

Provitera-cross

2 Q Which ones did you look into?

3 A When I -- mostly all of them. When I
4 would look under my seat I would open the bag and see
5 what was in it. If I put it in my toolbox, I would open
6 it and look in it before I put it in my toolbox.

7 Q How would these packages be packed? I think
8 you referred to them as being in a paper bag, right?

9 A They were packed in plastic bag that was put
10 into a paper bag.

11 Q And, of course, you couldn't see anything through
12 the paper bag, you had to open the bag, is that right?

13 A Yes, yes.

14 Q Then you saw a plastic bag, right?

15 A Yes.

16 Q And did you ever look into any of the packages
17 you allegedly picked up from Mr. Garba's house?

18 A I remember looking into packages. I don't
19 remember at what times.

20 Q Specifically I am asking you about packages you
21 received from Mr. Garba's house. Did you look into
22 those packages?

23 A Specifically, I do not remember.

24 Q Did you ever go there on a Friday to Mr. Garba's
25 house?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta Provitera-cross

3077

A Possibly.

Q He could have slipped you a nackerel in that package on Friday, right?

A Right.

Q You wouldn't have known the difference?

A I would have smelled it.

Q The Johnny that has been mentioned here, Mr. Provitera, is Harry's brother, right?

A Yes.

Q And did there come a time when Johnny said to you and Harry, in effect, "I'm not going to buy my freedom the way you guys are, I'm not going to do it"? Did he say anything like that?

A No.

Q Do you know whether Johnny has testified at this trial?

A Do I know? I know that he hasn't.

Q He has not?

A He has not.

Q You know that he has not?

A Right.

Q Do you know where he is?

A Home, I guess, or at work.

Q When did you last see him?

1

gta

Provitara-cross

3073

2

A A couple of months, I imagine. A couple of

3

months.

4

Q Did you have a conversation with him then?

5

A I talked briefly with him for a couple of

6

minutes here.

7

Q I'm sorry.

8

A I did talk briefly with him a couple of minutes

9

at the DA's here.

10

Q When you say DA, again, you are talking about

11

the United States attorney?

12

A Yes, yes.

13

Q When you saw Johnson here at the United States

14

Attorney's Office, did you talk to him?

15

A I was, like, leaving when he was coming in,

16

just "Hello. How are you doing?"

17

Q No other conversation?

18

A No.

19

Q And isn't it a fact in conversations that you

20

had with Harry, your brother-in-law, that in one of them

21

or more of them he said to you, "When you testify, we got

22

to get this guy Garba here"? Isn't that so?

23

A No, sir.

24

Q You know, don't you, that Harry felt that

25

everybody had turned his back on him? Did he ever tell

Q Well, if he got it you'd know of it?

A I didn't get it if he got it.

Q Right. If he had gotten the money you would get your 600 bucks, right?

A I can't say what Harry would do.

MR. KING: I am not going to hold the court until 5 o'clock this time, Judge.

THE COURT: All right, ladies and gentlemen, go out with the marshals, please.

Everybody else remain seated.

(The jury left the courtroom.)

THE COURT: Mr. Provitera, would you go back to the witness room and remain there, please.

(The witness left the courtroom.)

THE COURT: A Wade hearing was requested by Mr. Pollak. I am prepared to go forward with that now, but I have a strong suspicion that some of you might like to get out of here before we go forward with that hearing.

I am going to take five minutes. Those of you who want to remain, do; those of you who want to clear out can.

MR. PANZER: Your Honor, I just have one matter.

MR. CURRAN: Your Honor, we have copies

1
2 that?

3 A No, sir, he didn't.

4 Q He never said that to you?

5 A No.

6 Q Did he intimate it to you? Did he say,
7 "Here I need money and nobody has given me a dime"?

8 A No, not that I recall.

9 Q Do you recall after his arrest his frantic tele-
10 phone calls to various people, notably Carmine Pugliese,
11 asking him for money?

12 MR. SINGAL: What was that name, your
13 Honor?

14 MR. ENGEL: Objection, your Honor.

15 THE COURT: Carmine Pugliese.

16 MR. ENGEL: Objection.

17 THE COURT: The question is does he know
18 about it. I will permit it.

19 Go ahead, answer it. Do you know about it?

20 THE WITNESS: I knew he was making phone
21 calls for money. I didn't know who they were to.
22 I knew he was trying to call Pat Dilacio for money.

23 Q And did he succeed in getting any of that
24 money he was seeking?

25 A I don't know.

2 Q Well, if he got it you'd know of it?

3 A I didn't get it if he got it.

4 Q Right. If he had gotten the money you would
5 get your 600 bucks, right?

6 A I can't say what Harry would do.

7 MR. KING: I am not going to hold the court
8 until 5 o'clock this time, Judge.

9 THE COURT: All right, ladies and gentlemen,
10 go out with the marshals, please.

11 Everybody else remain seated.

12 (The jury left the courtroom.)

13 THE COURT: Mr. Provitera, would you go back
14 to the witness room and remain there, please.

15 (The witness left the courtroom.)

16 THE COURT: A Wade hearing was requested by
17 Mr. Pollak. I am prepared to go forward with that now,
18 but I have a strong suspicion that some of you might like
19 to get out of here before we go forward with that hearing.

20 I am going to take five minutes. Those of
21 you who want to remain, do; those of you who want to
22 clear out can.

23 MR. PANZER: Your Honor, I just have one
24 matter.

25 MR. CURRAN: Your Honor, we have copies

1 gta

2 of the comments on your Honor's proposed charge.

3 THE COURT: Let me have a copy, please.

4 MR. CURRAN: We are, sir. We have the
5 original for you.

6 (Recess.)

7 (In open court; jury not present.)

8 THE COURT: All right, Mr. Engel.

9 MR. ENGEL: Your Honor, the government is
10 ready.

11 THE COURT: All right. Mr. Pollak, are you
12 ready?

13 MR. POLLAK: Yes, your Honor.

14 THE COURT: I assume you want to call the
15 agent first, is that right?

16 MR. POLLAK: Yes. I will call Mr. Nolan.

17 THE COURT: Where is Mr. Nolan?

18 MR. ENGEL: He is in the witness room, your
19 Honor.

20 MR. POLLAK: I gather Mr. Nolan was the agent
21 who showed him the pictures.

22 MR. ENGEL: That is correct.

23 I gather Agent Moore was there as well.

24 MR. POLLAK: Is Agent Moore available?

25 MR. ENGEL: I told him to stick around.

2 MR. POLLAK: I would like to have him here.

3 Would your Honor want this hearing to into the
4 out-of-court identification by both Pannirello and
5 Provitera?

6 THE COURT: No, just on Provitera.

7 J O H N J O S E P H N O L A N, called as a
8 witness by defendant Salley, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. POLLAK:

12 Q Mr. Nolan, you are employed by the federal
13 government, I take it, by the Drug Enforcement Admini-
14 stration?

15 A That's correct, sir.

16 Q As a special agent?

17 A Yes, sir.

18 Q And you were so employed during 1972 and 1973?

19 A That's correct, sir.

20 Q Did there come a time in this case when you
21 showed certain photographs to a witness in this case, a
22 Pasquale Jimmy Provitera?

23 A That's correct, sir.

24 Q And were those photographs shown to him in an
25 attempt to see if he could identify Henry Salley, one of

1 gta

Nolan-direct

3083

2 the defendants in this case?

3 A Correct, sir.

4 Q When and where were those photographs shown
5 to the witness?

6 A When was approximately, I would say, July of
7 '73. I don't remember the exact date. Where would
8 be in our head office at 57th Street and Eleventh
9 Avenue.

10 Q He was shown these photographs on only one oc-
11 casion?

12 A To the best of my knowledge, yes.

13 Q How many photographs was he shown?

14 A Approximately 20 photographs.

15 Q Do you have those photographs or does govern-
16 ment counsel have those photographs in court today?

17 A The government counsel has them.

18 MR. POLLACK: May I see them, Mr. Engel?

19 MR. ENGEL: May the record reflect I am
20 handing the photographs to Mr. Pollak (handing).

21 MR. POLLAK: I suppose we ought to have the
22 envelope marked as an exhibit for identification on the
23 hearing, your Honor.

24 MR. ENGEL: May the envelope containing
25 the photographs be marked as Government's Exhibit 1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Nolan-direct

3084

I take it we can mark all the photographs as part of that exhibit, Mr. Pollak?

MR. POLLAK: Yes. Do you know the exact number that are in there?

MR. ENGEL: There are in the neighborhood of 20.

MR. POLLAK: All right, let me have them and I will count them.

(Pause.)

MR. POLLAK: Mr. Engel, my count is 19. Do you want to verify my count or will you accept my statement?

THE COURT: We believe you.

MR. POLLAK: Okay.

MR. ENGEL: So does the government, your Honor.

BY MR. POLLAK:

Q Agent Nolan, I show you the envelope and the 19 photographs contained therein and I ask you if these are the photographs that you showed to Mr. Provitera.

MR. ENGEL: May that be marked, your Honor, please?

THE COURT: Yes, it will be marked in just a minute.

1 gta Nolan-direct 3085

2 MR. POLLAK: I am sorry. I thought it
3 was.

4 A Those are the photographs.

5 Q And one of those 19 is a photograph of Henry
6 Salley, is that correct?

7 A That's correct, sir.

8 Q Could you pick out the one that is a photograph
9 of Henry Salley?

10 A This one here. (indicating).

11 MR. POLLAK: May we have the photograph of
12 Henry Salley marked, your Honor.

13 THE COURT: All right. Let us mark the
14 envelope 1 and this photograph 2.

15 (Government's Exhibits 1 and 2 were marked for
16 identification.)

xx 17 Q Mr. Nolan, drawing your attention to Govern-
18 ment's Exhibit 2 for identification, do you know when
19 and where that photograph was taken?

20 A No, sir, I don't know when or where it was
21 taken.

22 Q How did it come into your possession?

23 A It was sent to me by the Washington district
24 office of the DEA.

25 Q You don't know who took the picture then?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Nolan-direct

3086

A No, sir.

MR. POLLAK: May I have a moment to talk to my client, your Honor.

(Pause.)

BY MR. POLLAK:

Q You don't know where the Washington office got the picture from then, agent, is that right?

A That's correct.

Q If I told you that this is a picture identical with one on Mr. Salley's driving license, would that refresh your recollection as to where it was obtained?

A No, sir.

Q Sir, I ask you to look at the other 18 photographs here. Did you show them to the witness in any particular order?

A No. They were in no particular order, the way I remember it.

Q Did you spread out all 19 on a table in front of him? How were they shown to him?

A Normally I show them -- put them all pretty much like that (indicating).

Q Take this large one, No. 2, with it. You hand them the photographs and you say, "Take a look at them," just the way you handed them to me?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Nolan-direct

3087

A Yes, sir.

Q You don't know if Exhibit 2 was on top, on the bottom or in the middle?

A I have no idea.

Q It was just in random sampling and you don't know which order they were in?

A Yes.

Q What did the witness do, take a look at them one at a time?

A Yes, sir.

Q And then he identified Exhibit No. 2 as being Henry Salley, is that right?

A That's correct.

Q Sir, I ask you to take a look at the other 18 and then take a look at Exhibit 2, and I ask you, does anything strike you unusual about Exhibit 2 as distinct from the other 18?

A The size of the photograph.

Q Would it be fair to say it is about four times as large as any other face on any other pictures?

A I would say about two times as large as any of the other pictures shown.

Q Twice as large?

A At least.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Nolan-direct

3088

Q Here, let us take one at random. What happens to be on top, the face is twice as large as this?

A A little bit more than twice.

Q But twice is your estimate?

A At least, yes.

Q At least.

MR. ENGEL: Your Honor, may the photo that he compared it with be marked Government's Exhibit 3, please.

MR. POLLAK: Sure.

(Government's Exhibit 3 marked for identification.)

xx Q Is there anything else that is different about the 18 as distinct from the one large one?

Let me help you, agent. Isn't it a fact that the 18 others are all mug shots with numbers under them and the one of Mr. Salley, Exhibit 2, is not a mug shot?

A If I'm not mistaken, there was one other photograph that didn't have a mug shot.

Q Could you find that?

A It's not here. If I'm not mistaken it might be marked a government exhibit. It was the photograph of Warren Robinson.

Q What you are telling us is --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Nolan-direct

3089

A It should be minus one.

Q And the Warren Robinson photograph -- what size was the Warren Robinson photograph?

A Pretty much of this size over here.

Q Exhibit 3?

THE COURT: In other words, it is about 3 x 3-1/2?

THE WITNESS: Yes, sir.

Q Let us take one that is marked. Would it be about the same size as Exhibit 3 for identification?

A That's correct, yes.

Q Okay. In fact, all the other 18 are about the same size as Exhibit 3 for identification, right?

A That's correct.

Q The other 18 here are all double shots, one frontal face and one side view, isn't that correct?

A With the exception of three photographs.

Q The three others are also mug shots, right?

A That's correct.

Q Did the witness have an opportunity to examine the backs of any of these photographs?

A No, sir.

Q So to summarize, Agent Nolan, the differences between Exhibit 2 and the others are, No. 1, the size;

1 gta

Nolan-direct

3090

2 No. 2, that all the others, except for No. 2, are mug shots;
3 and, No. 3, with the exception of three others, 15 of
4 of the others are double shots, side and front?

5 A That's correct.

6 Q How long did it take Mr. Provitera to
7 pick out No. 2 from the batch?

8 A He went through them fairly rapidly and he
9 finished within five minutes, all the pictures, and we
10 asked him to put aside any ones that he could identify.

11 Q Did he put aside any except Exhibit 2?

12 A He put aside Exhibit 2, a photograph of Warren
13 Robinson, a photograph of Thomas Dawson.

14 Q Is Thomas Dawson in the batch of 13 that you
15 have here?

16 A Yes, sir, he should be.

17 Q Find it for me.

18 A Here (indicating).

19 THE COURT: All right. Let us have
20 Dawson's picture marked as No. 4.

21 (Government's Exhibit 4 marked for identifi-
22 cation.)

23 Q You have had conversations with the witness
24 Provitera since that date, haven't you?

25 A That's correct.

A In my custody.

A To the best of my knowledge, he was shown these
es of pictures only once.

Q What about Exhibit 2?

A That would include Exhibit 2 also.

Q To the best of our knowledge, he never saw Exhibit 2 after that one occasion in July?

A That's correct.

MR. POLLAK: May I have a moment, your Honor.

THE COURT: Yes.

(Pause.)

THE COURT: While we are waiting let us mark the other three pictures as 5, 6 and 7.

(Government's Exhibits 5 through 7 were marked for identification.)

MR. POLLAK: I have nothing further of this witness.

I would offer the photographs at this point that were marked for identification. I offer them for

gta

Nolan-direct

3092

the purposes of the hearing only in evidence and ask the court to examine them.

THE COURT: Yes. I assume you don't object to it?

MR. ENGEL: No, your Honor.

MR. POLLAK: Nothing further.

THE COURT: Agent, when you were talking with Mr. Provitera, you handed him these 19 photographs, is that correct?

THE WITNESS: That's correct, sir.

THE COURT: And exactly what did you say to him at that point?

THE WITNESS: I said, "I'm going to show you a series of photographs. If you can identify any of them I want you to put aside whatever you can identify to one side. After that I want you to tell me in what manner do you know these people: do you know their names, and how did you get to know them."

THE COURT: All right. All right, step down.

MR. POLLAK: I have one further question that occurs to me.

THE COURT: Sure.

BY MR. POLLAK:

Q Agent Nolan, in connection with Mr. Provitera's viewing of these photographs, did you file any report or memorandum?

A No, sir.

Q Who else was present, by the way?

A Agent Fred Moore.

Q Do you know if Agent Moore filed a memorandum or report?

A No, he did not.

MR. POLLAK: Thank you.

THE COURT: All right, step down.

(Witness excused.)

THE COURT: Who do you want now?

MR. POLLAK: I will take Mr. Provitera. I assume he is not going to talk to Agent Moore.

THE COURT: I assume he isn't.

Pick up the exhibits. You don't want them spread around the table now.

MR. ENGEL: Were Exhibits 5, 6 and 7 marked?

THE COURT: Yes.

(Government's Exhibits 1 through 7 were received in evidence.)

1 gta

3094

2 P A S Q U A L E P R O V I T E R A, called as
3 a witness by the defendant Salley, being previously
4 duly sworn, testified as follows:

5 THE CLERK: I remind you you are still
6 under oath.

7 DIRECT EXAMINATION

8 BY MR. POLLAK:

9 Q Mr. Provitera, do you recall, in connection
10 with the government's investigation of this case, talking
11 on an occasion with Agent Nolan here in New York and on
12 that occasion do you recall being shown some photographs?

13 A I was shown photographs by Nolan on a few
14 occasions.

15 Q On a few occasions?

16 A Yes.

17 Q Can you tell us when the first time was that
18 you were shown photographs by Agent Nolan?

19 A I couldn't say the exact date, but it was
20 around the time of the cooperation, June or July.

21 Q You say there was a subsequent occasion on which
22 he showed you photographs?

23 A On a few occasions he showed me photographs?

24 Q First of all, can you give us about how many?
25 What is a few? Is it two, four, five?

1 gta
2 A Well, there was -- there was three or four
3 occasions where he handed me a group, like a handful of
4 photographs, and asked me could I identify any one out
5 of them.

6 Q Can you tell me, perhaps you can give us some
7 estimate: did it happen twice? Did it happen
8 five times? Did it happen ten times?

9 THE COURT: Mr. Pollak, I think he already
10 said it was three or four times.

11 MR. POLLAK: I am sorry.

12 Q Sir, on those occasions where you were shown
13 photographs, on the three or four occasions, did any
14 of those photographs cause you to identify it as a
15 photograph of Henry Salley?

16 A Yes.

17 Q And was that on one occasion or on all of the
18 three or four occasions?

19 A I don't remember.

20 Q But it was at least once, right?

21 A Yes.

22 Q On that occasion do you know how many photo-
23 graphs Agent Nolan showed you?

24 A I couldn't say for sure. It was always,
25 like, a handful, four or five or six photographs.

Q Could it have been as many as 19?

A No, I wouldn't say that.

Q It couldn't have been more than, let's say, ten? Could it have been as many as ten?

A Possibly. I can't say for sure. I just remember a handful of photographs.

Q But it certainly couldn't have been more than ten? More than ten would be more than a handful, right?

A Yes, I guess.

Q By the way, on these three or four occasions where did he show you these photographs?

A In a room in the agent's office building.

Q And that was on each of the three or four occasions?

A Yes.

Q I show you Exhibit 2 on this hearing and I ask you if you have ever seen that before?

A Yes.

Q When was the first time you saw that photograph?

A I can't -- I can't separate the occasions, you know. It was three or four times I was given photographs and asked to pick out who I could identify.

Q Did you see that photograph on one occasion

1 gta

Provitera-direct

3097

2 or did you see it on all three or four occasions?

3 A I really can't say. I can't remember.

4 Q Will you describe for us what happened the
5 first time you were asked to view photographs? Tell
6 us exactly what happened.

7 A Agent Nolan or possibly Agent Moore handed me
8 photographs. I was sitting, like, in an interrogation
9 room, just, you know, a plain room with a desk and he
10 handed me photographs and said, "Can you pick out any-
11 body in these that you know?"

12 Q Did he hand you one photograph at a time or
13 did he spread them out for you so that you could view,
14 say, the whole bunch of photographs he was showing you
15 at the same time or what method did he employ?

16 A I couldn't say positively, k because I think
17 he handed me the handful and I went through them, but I
18 couldn't say positively. I don't remember him handing
19 me -- handing them to me one at a time.

20 Q Do you recall an occasion on which you iden-
21 tified that photograph, Exhibit 2, as being a photograph
22 of Henry Salley?

23 A I remember identifying that photograph as
24 Henry Salley. I don't remember what occasion it was on.

25 Q On that occasion, did you identify anybody else

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gta

Provitera-direct

3098

in the group of photographs that the agent showed you?

A I may have. I don't remember.

Q I ask you to look through these photographs,
and for the record I state that I am now showing you the
other 18 photographs that were in Exhibit 1, and ask you,
do any of these photographs look like some that you have
seen before?

A Some of them do and some of them don't.

Q Here are three more.

A Yes, some of them I've seen before.

Q You have seen some of them before? By the
way, could you identify anyone -- quite aside from whether
you have seen the photos before, did you see anybody
in those 18 photographs that you recognized?

A I remember seeing some of the photos.

Q But you couldn't identify anybody in the

photos, is that your testimony?

A No.

MR. POLLAK: I take it, Mr. Engel, you

will stipulate that the photograph of Tennessee was in

the batch I showed the witness.

MR. ENGEL: Yes, Mr. Pollak.

MR. POLLAK: Thank you.

Q Drawing your attention again to Exhibit 2, the

photograph that is before you, did you ever see that

picture or one identical with it without being shown any

other pictures?

A I don't recall that, no.

Q I believe you previously testified during the

trial itself that you had several conversations with

members of the staff of the United States Attorney's

Office before you testified here, right?

A Yes.

Q In those conversations did anybody, Mr. Engel,

Mr. Phillips, anybody else you may have talked to, show

you any photographs?

A Yes, Mr. Engel showed me photographs the

other day.

Q When was that, sir?

1 jha Provitera-direct 3100

2 A Last week, Sunday.

3 Q Last Sunday?

4 A Yes.

5 Q And that was in the United States Attorney's
6 Office in this building, right?

7 A Yes, yes.

8 Q Did he show you either Exhibit 2 or a picture
9 that was similar?

10 A No.

11 Q He showed you photographs of people, I take
12 it, right?

13 A Yes.

14 Q He asked you to identify any of the people?

15 A Yes.

16 Q Were you able to do so?

17 A Yes.

18 Q Did you identify a picture of Henry Salley?

19 A No. There wasn't any picture of Henry
20 Salley.

21 Q In that group?

22 A No.

23 Q So that you don't know whether you saw Exhibit
24 2 on the three or four occasions or whether you saw it
25 only on one occasion, right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

jha

Provitera-direct

3101

A Right.

MR. POLLAK: No further questions of this witness.

MR. ENGEL: Your Honor, may I examine?

THE COURT: Sure.

CROSS EXAMINATION

BY MR. ENGEL:

Q Mr. Provitera, you testified this morning and this afternoon, I guess, actually, about seeing the defendant Henry Salley in the fall of 1972 on three or four occasions, is that right?

A Yes.

Q On those occasions was he wearing glasses?

A Yes.

Q Did you have occasion to examine Government's Exhibit 2 for identification? Was he wearing glasses in that photograph?

A Yes.

Q And this afternoon when you identified Henry Salley in the courtroom was he wearing glasses?

A No.

Q Mr. Provitera, do you recall ever being shown by Agent Nolan or Agent Moore, anybody, the entire batch of photographs shown in Exhibit 1 for identification?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

jha

Provitera-cross

3102

Do you recall being shown --

A You mean handed all these at once?

Q Yes.

A I could have been. I don't --

Q All right. When was the last time you were shown any photographs of this nature, that is to say, groupings like that, by the agents, if you can recall?

A To the best of my recollection, it was June or July.

Q When was the last time you saw Exhibit 2, to the best of your recollection?

A It would be with the other times.

Q So the last time you saw any of these photographs would have been the midsummer of last year, is that correct, the latest?

A Yes, to my recollection.

MR. ENGEL: That's all I have, your Honor.

MR. POLLAK: I just have one other question, your Honor.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. POLLAK:

Q Mr. Provitera, at the time of the three or four occasions, Agent Nolan was present at all of those,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

jha Provitera-redirect 3103

right, where you were shown photographs?

A It could have been one of the other agents then
I can't say for certain that Nolan was there all the times
I just recall being shown pictures by agents.

I do recall Nolan showing them to me and also
possibly Moore might have. I don't remember that,
you know.

Q Do you remember Moore showing it to you on
more than one occasion?

A No. The only way I recollect is, like, agents
showing me pictures.

Q So you can't say whether either Nolan or
Moore was present on more than one occasion?

A No, I can't.

MR. POLLAK: Thank you.

THE COURT: All right. Step down.

(Witness excused.)

THE COURT: Do you want to call Agent Moore?

MR. POLLAK: Yes, please.

THE COURT: Good. 9:30 tomorrow morn-

ing.

(Adjourned to February 21, 1974, at 9:30

a.m.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Pedirect</u>	<u>Recross</u>
Salvatore Spataro	2935	2937		
Stanley Blasof	2939	2949		
Pasquale Provitera	2963	3036		
John Joseph Nolan	3082	3101	3102	

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
1	3085	3093
2	3085	3093
3	3088	3093
4	3090	3093
5 through 7		3093